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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	8364/1/16 REV 1
Subject:	Draft COUNCIL IMPLEMENTING DECISION approving the conclusion by the European Police Office (Europol) of the Agreement on Strategic Cooperation between the Ministry of Public Security of the People's Republic of China and Europol

1. Article 23(2) of Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)¹ provides that Europol's cooperation agreements "*may be concluded only after the approval by the Council, which shall previously have consulted the Management Board (...)*".

Article 6, paragraphs (3) and (4) of Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information² further provide that:

"(3) After finalising the negotiations to an agreement, the Director shall submit the draft agreement to the Management Board. (...) The Management Board shall endorse the draft agreement before submitting it to the Council for approval. (...)

¹ OJ L 121, 15.5.2009, p. 37.

² OJ L 325, 11.12.2009, p. 6.

(4) In accordance with Article 23(2) of the Europol Decision, such agreements shall only be concluded after the approval by the Council, which shall previously have consulted the Management Board (...)".

2. By letter dated 15 April 2016, the Chairperson of the Europol Management Board transmitted, in accordance with Article 23(2) of the Europol Council Decision, the draft Agreement on Strategic Cooperation between the Ministry of Public Security of the People's Republic of China and the Europol, as endorsed by the Management Board on 8 April 2016, to the Council for approval (7916/16).
3. The Law Enforcement Working Party (LEWP) agreed to the aforementioned draft Agreement on Strategic Cooperation between the Ministry of Public Security of the People's Republic of China and the Europol (7916/16) as well as to the draft Council Implementing Decision approving the conclusion of this Agreement (7917/16) at its meeting on 26 April 2016.
4. After the agreement by the LEWP, the text of the draft Council Implementing Decision approving the conclusion by the European Police Office (Europol) of the Agreement on Strategic Cooperation between the Ministry of Public Security of the People's Republic of China and Europol has undergone the lawyer-linguist revision. The revised version is set out in 8364/1/16 REV 1.
5. As indicated above, Article 23(2) of Decision 2009/371/JHA and Article 6(4) of Council Decision 2009/934/JHA provide that prior to the approval of the Europol's cooperation agreements the Council *"shall previously have consulted the Management Board"*. Following the request by the Permanent Representatives Committee (9626/16), the Management Board delivered its opinion on 8 July 2016.

6. In line with the judgment of the Court of Justice of the European Union of 16 April 2015 in Case C-540/13, where it ruled that the Council should have consulted the European Parliament before adopting Council Decision 2013/392/EU fixing the date of effect of the VIS Decision, as stipulated by Article 39(1) of the former Treaty on European Union³ even in cases where the relevant provision of the basic act - like Article 23(2) of Council Decision 2009/371/JHA - does not explicitly provide so⁴, the conclusion of Europol's cooperation agreements with third countries should be approved by adopting Council Implementing Decisions, regarding which the European Parliament should be consulted on the basis of Article 39(1) of the former Treaty on European Union.
7. The European Parliament delivered its positive opinion on 4 October 2016.
8. *On this basis, the Permanent Representatives Committee is invited to submit the draft Council Implementing Decision approving the conclusion by the European Police Office (Europol) of the Agreement on Strategic Cooperation between the Ministry of Public Security of the People's Republic of China and Europol, as set out in 8364/1/16 REV 1, to the Council, and to suggest that it adopts this Council Implementing Decision.*

³ For more information on this case, see 8541/15 and 9599/15.

⁴ See paragraphs 37 to 40 and 53 to 57 of Case C-540/13.