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NOTE

From: Presidency
To: Delegations

Subject: Draft Council Implementing Decision of (...) amending Decision
2009/935/JHA as regards the list of third States and organisations with
which Europol shall conclude agreements

1. On 15 December 2016, the President of the European Council, the President of the Commission and the Prime Minister of Denmark adopted a declaration to minimise the negative effects of the Danish departure from Europol, following the referendum in Denmark on 3 December 2015.
2. On 21 December 2016 the Europol Management Board, by way of a letter from its Chairman¹ of recommended to the Council to add Denmark to the list of countries with which Europol should conclude an agreement. A draft Council Implementing Decision (EU) 2016/... amending Decision 2009/935/JHA as regards the list of third States and organisation with which Europol shall conclude agreements has therefore been prepared, as set out in the Annex to this note.
3. As indicated at Coreper on 20 December 2016, the consultation of the European Parliament is required and should be decided by silence procedure in accordance Article 12(2)(c) of the Council's Rules of Procedure. It was also indicated that the incoming Presidency would convene a meeting of the JHA Counsellors in order to discuss the text of the draft Council Implementing Decision.

¹ 15759/16

COUNCIL IMPLEMENTING DECISION

of (...)

**amending Decision 2009/935/JHA as regards the list of third States and organisations
with which Europol shall conclude agreements**

The Council of the European Union,

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

Having regard to Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)², and in particular point (a) of Article 26(1) thereof,

Having regard to 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 information³, and in particular Articles 5 and 6 thereof,

Having regard to the opinion of the European Parliament⁴,

Whereas

(1) On 30 November 2009, the Council adopted Decision 2009/935/JHA⁵.

² OJ L 121, 15.5.2009, p. 37

³ OJ L 325, 11.12.2009, p. 6

⁴ Opinion of (...) (not yet published in the Official Journal).

⁵ Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements (OJ L 325, 11.12.2009, p.12).

- (2) Point (a) of Article 26 (1) of Decision 2009/371/JHA confers on the Council implementing powers to determine the list of third states and organisations with which Europol shall conclude agreements. Pursuant to Decisions 2009/371/JHA and 2009/935/JHA, the list is set out in the Annex to Decision 2009/935/JHA.
- (3) It is for Europol's Management Board to review the list when necessary and to decide whether to propose to the Council amendments thereto.
- (4) As of 1 May 2017, the new Europol Regulation (EU) 2016/794⁶ (the "Europol Regulation") will apply. Pursuant to Protocol n° 22 annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not bound by the Europol Regulation or subject to its application. Therefore, as of 1 May 2017, Denmark will be regarded as a third country with respect to Europol.
- (5) Given the importance attached by all sides to preventing and combatting serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, it is important to ensure cooperation between Europol and Denmark on key matters so as to enhance the EU's resilience to security threats.
- (6) In accordance with point (c) of Article 25(1) of the Europol Regulation, a cooperation agreement allowing for the exchange of personal data concluded before 1 May 2017 between Europol and a third country in accordance with Article 23 of Decision 2009/371/JHA, may constitute the basis for the transfer of personal data from Europol to a third country, insofar as such transfer is necessary for the performance of Europol's tasks.
- (7) On 20 December 2016 Europol's Management Board decided to recommend to the Council that it add Denmark to the list, outlining the operational need to conclude cooperation agreement with Denmark.

⁶ OJ L 135, 24.5.2016, p. 53

(8) In order to avoid an operational gap as of 1 May 2017 when Denmark will no longer participate in Europol as a Member State, it is most important that Europol initiate the procedure for the conclusion of a cooperation agreement with Denmark as a third country without delay.

(9) Denmark is bound by Decision 2009/371/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2009/371/JHA.

(10) The United Kingdom and Ireland are bound by Decision 2009/371/JHA and are therefore taking part in the adoption and application of this Decision which implements Decision 2009/371/JHA.

(11) Decision 2009/935/JHA should therefore be amended accordingly.

HAS ADOPTED THIS DECISION

Article 1

In point 1 of the Annex to Decision 2009/935/JHA, the following entry is inserted:

- Denmark.

Article 2

This Decision shall enter into force on the day of its adoption.

It shall be published in the *Official Journal of the European Union*.