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## NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	7078/17
Subject:	Draft Council Implementing Decision (EU) 2017/... approving the conclusion by the European Police Office (Europol) of the Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol

In its judgment of 16 April 2015 in [Case C-540/13](#), the Court of Justice of the European Union 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 Union<sup>1</sup>. This obligation to consult the European Parliament applies 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 so<sup>2</sup>.

In line with this judgment, the conclusion of Europol's cooperation agreements with third countries should be approved by a Council Implementing Decision regarding which the European Parliament should be consulted on the basis of Article 39(1) of the former Treaty on European Union.

<sup>1</sup> For more information on this case, see [8541/15](#) and [9599/15](#).

<sup>2</sup> See paragraphs 37 to 40 and 53 to 57 of [Case C-540/13](#).

In light of the above and of the Implementing Decision taken by the Council on 17 February 2017 (2017/290) to add Denmark to the list of third countries with which Europol shall conclude agreements and of the draft agreement submitted by Europol to the Council (7078/17), the draft Council Implementing Decision (EU) 2017/... approving the conclusion by the European Police Office (Europol) of the Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol is set out in the Annex.

*Delegations are invited to agree to this draft Council Decision prior to consulting the European Parliament.*

**DRAFT**

**COUNCIL IMPLEMENTING DECISION (EU) 2017/...**

**of ...**

**approving the conclusion by the European Police Office (Europol) of the  
Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and  
Europol**

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)<sup>3</sup>, and in particular Article 23(2) 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 information<sup>4</sup>, and in particular Articles 5 and 6 thereof,

Having regard to Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements<sup>5</sup>,

Having regard to the opinion of the European Parliament<sup>6</sup>,

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<sup>3</sup> OJ L 121, 15.5.2009, p. 37.

<sup>4</sup> OJ L 325, 11.12.2009, p. 6.

<sup>5</sup> OJ L 325, 11.12.2009, p. 12.

<sup>6</sup> Opinion of ... April 2017 (not yet published in the Official Journal).

Whereas:

- (1) Pursuant to Decision 2009/371/JHA and Decision 2009/934/JHA, Europol is to conclude agreements with the third States which have been placed on the list annexed to Decision 2009/935/JHA. Such agreements have the objective of supporting and strengthening action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States, and may concern the exchange of operational, strategic or technical information, including personal data and classified information. Strategic agreements involve the exchange of information excluding personal data, whereas operational agreements involve the exchange of information including personal data. Strategic agreements may be concluded by Europol only after approval by the Council, the latter having previously consulted the Management Board of Europol ('Management Board'). Operational agreements require, in addition, that the Council obtain, via the Management Board, the opinion of the Joint Supervisory Body of Europol ('Joint Supervisory Body'), in so far as the agreement concerns the exchange of personal data.
- (2) By Council Implementing Decision 2017/290<sup>7</sup>, Denmark is included on the list annexed to Decision 2009/935/JHA. The reason for Denmark's inclusion on the list is that Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>8</sup>, by which Denmark is not bound, will apply from 1 May 2017 and therefore, Denmark will be regarded as a third State with respect to Europol as from that date.

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<sup>7</sup> Council Implementing Decision (EU) 2017/290 of 17 February 2017 amending Decision 2009/935/JHA as regards the list of third States and organisations with which Europol shall conclude agreements (OJ L 42, 18.2.2017, p. 17).

<sup>8</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

- (3) Given the importance attached by all sides to preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, it was considered important to ensure cooperation between Europol and Denmark on key matters so as to enhance the Union's resilience to security threats. Europol has therefore initiated, in accordance with Decision 2009/934/JHA, the procedure for the conclusion of an Agreement on Operational and Strategic Cooperation between Denmark and Europol ('Operational and Strategic Agreement').
- (4) The terms of the cooperation governed by the Operational and Strategic Agreement provide for: the exchange of information, which may, in accordance with the tasks of Europol as outlined in Decision 2009/371/JHA, include specialist knowledge, general situation reports, results of strategic analysis, information on criminal investigation procedures and information on crime-prevention methods; participation in training activities; and the provision of advice and support in individual criminal investigations. In addition, given the specific situation of Denmark both an EU and a Schengen Member State, a number of specific provisions were included in the Operational and Strategic Agreement, regarding, for example, specifically assigned Danish-speaking staff under the authority of Europol for dealing with Danish requests on a 24/7 basis, various additional opportunities for the exchange of information, the possibility to invite Denmark as an observer to the Europol Management Board, the jurisdiction of the Court of Justice, the advanced application of Directive 2016/680<sup>9</sup> to Denmark and the role of the European Data Protection Supervisor, an appropriate contribution by Denmark to Europol's budget and Denmark's required continued membership of the Schengen area.

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<sup>9</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89)

- (5) In addition, following an assessment in accordance with Decision 2009/934/JHA to determine whether Denmark assures an adequate level of data protection, the Operational and Strategic Agreement contains provisions relating to the exchange of personal data. The Operational and Strategic Agreement received a positive opinion from the Joint Supervisory Body with regard to those provisions.
- (6) The Management Board approved the Operational and Strategic Agreement and transmitted it to the Council on 15 March 2017.
- (7) The conditions for triggering the exercise of the implementing powers by the Council pursuant to Decisions 2009/371/JHA, 2009/934/JHA and 2009/935/JHA have been met and an implementing decision should therefore be adopted in order to approve the conclusion of the Operational and Strategic Agreement.
- (8) 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.
- (9) 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.
- (10) On 10 March 2017, the Joint Supervisory Body delivered its opinion.
- (11) On ... March 2017, the Management Board delivered its opinion,

HAS ADOPTED THIS DECISION:

*Article 1*

Europol is authorised to conclude the Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol.

*Article 2*

This Decision shall take effect on the date of its notification.

*Article 3*

This Decision is addressed to Europol.

Done at ...,

*For the Council*

*The President*

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