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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	7078/17, 7079/17, 7281/17
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 - Consultation of the Management Board of 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 and, as far as it concerns the exchange of personal data, obtained the opinion of the Joint Supervisory Body via 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:

¹ OJ L 121, 15.5.2009, p. 37.

² OJ L 325, 11.12.2009, p. 6.

"(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. (...)

(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 March 2017, the Chairperson of the Europol Management Board transmitted, in accordance with Article 23(2) of the Europol Council Decision, the draft Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol, as endorsed by the Management Board, to the Council for approval (7078/17). Taking into account further Member States comments, the Chairperson of the Europol Management Board transmitted a second letter dated 16 March 2017 to the Council (7078/1/17 REV 1).
3. 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 as from now on 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).
4. On 16 March 2017 the draft Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol as well as the draft Council Implementing Decision approving the conclusion of this Agreement were approved at the JHA Counsellors' meeting.

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.

5. The text of the draft Council Implementing Decision approving the conclusion by the European Police Office (Europol) of the Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol has undergone the lawyer-linguist revision. The revised version is set out in 7281/17.
6. 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*". Even though the text of the Agreement has been submitted to the Council by the Management Board of Europol as provided for in Article 6(3) of Council Decision 2009/934/JHA, in order to fully comply with the above-mentioned provisions, the Council should consult the Management Board⁵. The procedure is in accordance with Article 23(2) of Decision 2009/371/JHA, Article 6(4) of Council Decision 2009/934/JHA and Article 19(7)(h) of the Council's Rules of Procedure.
7. *In view of the above, the Permanent Representatives Committee is invited to request the Management Board of Europol to deliver its opinion on the draft Council Implementing Decision approving the conclusion by the European Police Office (Europol) of the Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol, set out in 7281/17 by 10 April 2017.*

⁵ The sole purpose of this note is to decide on the consultation of another institution/body and not on the substance of the proposal.