



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 June 2014

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**CATS 89
CRIMORG 178
ENFOPOL 211**

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Subject: Draft Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway 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 and 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
- selected questions

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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THE EUROPEAN UNION**

Brussels, 5 November 2008

15198/08

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**CATS 89
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NOTE

from :	Presidency
to :	Article 36 Committee

No. prev. doc.:	13798/08 CATS 75 CRIMORG 156 ENFOPOL 182
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Subject :	Draft Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway 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 and 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 - selected questions
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1. On 24 October 2008, the Council approved mandate for the Presidency to negotiate the above-mentioned draft Agreement, associating Norway and Iceland to the application of the "Prüm Decisions". On 4 November, a first negotiation session was held, on the basis of the text set out in Annex. A number of questions were raised on which the Presidency wishes to obtain delegations' opinion with a view to the next negotiation session on 14 November 2008.

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Amendments to the Prüm Decision (Article 5 of the draft Agreement)

2. Article 5 sets out the procedure in case of amendments made by the EU to the "Prüm Decisions" and provides that if Iceland or Norway cannot accept the amendments, even after a period of suspension, the Agreement will be terminated. While this is important regarding the data exchange arrangements, including the data protection provisions, in order to ensure a coherent application, there may be more room for flexibility for the provisions regarding major events, measures to prevent terrorist offences and other forms of cooperation (chapters 3, 4 and 5 of Council Decision 2008/615/JHA).

Question 1. Can the Article 36 Committee agree that if Norway or Iceland cannot accept amendments relating to chapters 3, 4 and 5 of Council Decision 2008/615/JHA this does not necessarily have to result in the termination of the Agreement?

3. Pending the formal conclusion of the Agreement followed by its putting into operation for Iceland and Norway, the EU may have decided to amend the Prüm Decisions. In order to formally involve Iceland and Norway in accordance with the procedures set out in Article 5 of the Agreement in such amendments, it has been suggested to provide for the possibility of provisional application of Article 5(1) and (2) as from the day of signature of the Agreement.

Question 2. Can the Article 36 Committee agree that Article 5(1) and (2) is applied provisionally as from signature of the Agreement ?

Application of the Agreement (Article 8 of the draft Agreement)

4. Iceland and Norway propose to clarify in Article 8(3) of the draft Agreement that, as soon as the EU formal requirements are fulfilled to be bound by the Agreements, the Agreement can enter into force in its relations to Iceland even if Norway has not yet fulfilled all formal requirements or vice versa.

Question 3. Can the Article 36 Committee agree that, if the situation would present itself, the entry into force does not need to be simultaneous for Iceland and Norway ?

5. Iceland and Norway have requested that, subject to all the formal requirements being fulfilled and an evaluation being carried out, they would be allowed to exchange the different kinds of data with Member States already applying the relevant parts of the Prüm Decisions.

Question 4. Can the Article 36 Committee agree that, subject to the formal conditions being fulfilled, the Agreement would allow certain Member States to exchange data with Iceland and Norway, even if this occurs before all Member States apply all the data exchange parts of the Prüm Decisions between themselves?

Involvement of experts

6. It is accepted that the Agreement will not provide for arrangements for the involvement of Iceland and Norwegian experts within the working structures of the Council. However, these delegations suggested that a declaration be added to the Agreement setting out how their experts would be involved, with a view to exchanging technical comments and best practices, obtaining technical support and information etc.

Question 5. Can the Article 36 Committee agree that the practical details of the involvement of the experts from Iceland and Norway in the implementation work of the Prüm Decisions/Agreement be set out in a declaration of the Contracting Parties, to be adopted when signing the Agreement ?

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ANNEX

DRAFT

AGREEMENT between the European Union and the Republic of Iceland and the Kingdom of Norway 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 and 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

THE EUROPEAN UNION,

on the one hand, and

THE REPUBLIC OF ICELAND

and

THE KINGDOM OF NORWAY,

on the other hand,

hereinafter referred to as "the Contracting Parties",

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WISHING to improve police and judicial cooperation between the Member States of the European Union and Iceland and Norway, without prejudice to the rules protecting individual freedom,

CONSIDERING that current relationships between the Contracting Parties, in particular the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis, demonstrate close cooperation in the fight against crime,

POINTING OUT the Contracting Parties' common interest in ensuring that police cooperation between the Member States of the European Union and Iceland and Norway is carried out in a fast and efficient manner compatible with the basic principles of their national legal systems, and in compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950,

RECOGNISING that Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union ¹ already lays down rules whereby the law enforcement authorities of the Member States of the European Union and Iceland and Norway may exchange information and intelligence expeditiously and effectively for the purpose of carrying out criminal investigations or criminal intelligence operations,

RECOGNISING that, in order to stimulate international cooperation in this area, it is of fundamental importance that precise information can be exchanged swiftly and efficiently. The aim is to introduce procedures for promoting fast, efficient and inexpensive means of data exchange. For the joint use of data these procedures should be subject to accountability and incorporate appropriate guarantees as to the accuracy and security of the data during transmission and storage as well as procedures for recording data exchange and restrictions on the use of information exchanged,

¹ OJ L 386, 29.12.2006, p. 89.

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CONSIDERING that Iceland and Norway have expressed their wish to enter into an agreement enabling them to apply certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and 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, in relations with each other and with the Member States of the European Union,

CONSIDERING that the European Union also considers it necessary to enter into such an agreement,

POINTING OUT that this Agreement therefore contains provisions which are based on the main provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and 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 are designed to improve the exchange of information whereby Member States of the European Union and Iceland and Norway grant one another access rights to their automated DNA analysis files, automated dactyloscopic identification systems and vehicle registration data. In the case of data from national DNA analysis files and automated dactyloscopic identification systems, a hit/no hit system should enable the searching State, in a second step, to request specific related personal data from the State administering the file and, where necessary, to request further information through mutual assistance procedures, including those adopted pursuant to Framework Decision 2006/960/JHA,

CONSIDERING that these provisions would considerably speed up existing procedures enabling Member States, Iceland and Norway to find out whether another State, and if so, which, has the information it needs,

CONSIDERING that cross-border data comparison will open up a new dimension in crime fighting. The information obtained by comparing data will open up new investigative approaches and thus play a crucial role in assisting States' law enforcement and judicial authorities,

CONSIDERING that the rules are based on networking States' national databases,

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CONSIDERING that subject to certain conditions, States should be able to supply personal and non-personal data in order to improve the exchange of information with a view to preventing criminal offences and maintaining public order and security in connection with major events with a cross-border dimension,

RECOGNISING that in addition to improving the exchange of information, there is a need to regulate other forms of closer cooperation between police authorities, in particular by means of joint security operations (e.g. joint patrols),

CONSIDERING that closer police and judicial cooperation in criminal matters must go hand in hand with respect for fundamental rights, in particular the right to respect for privacy and to protection of personal data, to be guaranteed by special data protection arrangements, which should be tailored to the specific nature of different forms of data exchange. Such data protection provisions should take particular account of the specific nature of cross-border on-line access to databases. Since, with on-line access, it is not possible for the State administering the file to make any prior checks, a system ensuring post hoc monitoring should be in place,

CONSIDERING that the hit/no hit system provides for a structure of comparing anonymous profiles, where additional personal data is exchanged only after a hit, the supply and receipt of which is governed by national law, including the legal assistance rules. This set-up guarantees an adequate system of data protection, it being understood that the supply of personal data to another State requires an adequate level of data protection on the part of the receiving States,

AWARE OF the comprehensive exchange of information and data resulting from closer police and judicial cooperation, this Agreement seeks to warrant an appropriate level of data protection. It observes the level of protection designed for the processing of personal data in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, the Additional Protocol of 8 November 2001 to the Convention and the principles of Recommendation No R (87) 15 of the Council of Europe Regulating the Use of Personal Data in the Police Sector,

TAKING AS A BASIS the mutual confidence of the Member States of the European Union and Iceland and Norway in the structure and operation of their legal systems,

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RECOGNISING that the provisions of the bilateral and multilateral agreements remain applicable for all matters not covered by this Agreement,

HAVE AGREED AS FOLLOWS:

Article 1

Object and purpose

1. Subject to the provisions of this Agreement, the content of Articles 1-24, 25(1), 26-32 and 34 of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, shall be applicable in bilateral relations between the Republic of Iceland or the Kingdom of Norway and each of the Member States of the European Union and in relations between Iceland and Norway.
2. Subject to the provisions of this Agreement, the content 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, shall be applicable in the relations referred to in paragraph 1.
3. The declarations made by Member States in accordance with the above-mentioned Council Decisions shall also be applicable in their relations with the Republic of Iceland and the Kingdom of Norway.

Article 2

Definitions

1. "Contracting Parties" shall mean the European Union and the Republic of Iceland and the Kingdom of Norway.
2. "Member State" shall mean a Member State of the European Union.
3. "State" shall mean a Member State, the Republic of Iceland or the Kingdom of Norway.

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Article 3

Uniform application and interpretation

1. The Contracting Parties, in order to achieve the objective of arriving at as uniform an application and interpretation as possible of the provisions referred to in Article 1, shall keep under constant review the development of the case-law of the Court of Justice of the European Communities, as well as the development of the case-law of the competent courts of Iceland and Norway relating to such provisions. To this end a mechanism shall be set up to ensure regular mutual exchange of such case-law.
2. Iceland and Norway shall be entitled to submit statements of case or written observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provisions referred to in Article 1.

Article 4

Dispute settlement

Any dispute between either Iceland or Norway and a Member State regarding the interpretation or the application of this Agreement or of any of the provisions referred to in Article 1 thereof may be referred by a Party to the dispute to a meeting of representatives of the governments of the Member States and of Iceland and Norway, with a view to its settlement within six months.

Article 5

Amendments

1. Where it is necessary to amend the provisions of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, referred to in Article 1(1), and/or the substantive provisions of 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, including the Annex thereto, and where the amendment is applicable to them, the European Union shall inform Norway and Iceland and collect any comments they may have.

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2. Iceland and Norway shall be notified of any amendment of the provisions of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, referred to in Article 1(1), and any amendment of the substantive provisions of 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, including the Annex thereto, by the depositary as soon as the amendment is adopted.

Iceland and Norway shall inform the depositary, within three months of such notification, that they accept the amendment and will apply it from the date on which it is to be implemented by the Member States. Consequently, this Agreement shall apply to the content of the amended act from that date [or from any other date agreed between the Contracting Parties].

3. If either Iceland or Norway, or both, do not accept the amendment, this Agreement shall be suspended from the date on which the amendment is to be implemented by the Member States, for a period of six months in relation to the State or States which have not accepted the amendment. Suspension shall be terminated as soon as the State concerned notifies its acceptance of the amendment.
4. If, once the six-month suspension period has expired, the amendment has still not been accepted, this Agreement shall cease to apply to the State which has not accepted the amendment.

Article 6

Review

The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force. The review shall in particular address the practical implementation, interpretation and development of the Agreement and shall also include issues such as the consequences of development of the European Union relating to the subject-matter of this Agreement.

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Article 7

Relationship with other instruments

1. Iceland and Norway may continue to apply bilateral or multilateral agreements or arrangements on cross-border cooperation with Member States that are in force on the date this Agreement is adopted in so far as such agreements or arrangements are not incompatible with the objectives of this Agreement. Iceland and Norway shall notify the depositary of any such agreements or arrangements which will continue to apply.
2. Iceland and Norway may conclude or bring into force additional bilateral or multilateral agreements or arrangements on cross-border cooperation with Member States after this Agreement has entered into force insofar as such agreements or arrangements provide for the objectives of this Agreement to be extended or enlarged. Iceland and Norway shall notify the depositary of any such new agreement or arrangement within three months of signing or, in the case of instruments that were signed before the entry into force of the Agreement, within three months of their entry into force.
3. The agreements and arrangements referred to in paragraphs 1 and 2 may not affect relations with States that are not parties thereto.
4. This Agreement shall be without prejudice to existing agreements on legal assistance or mutual recognition of court decisions.

Article 8

Notifications, declarations and entry into force

1. The Contracting Parties shall notify each other of the completion of the procedures required to express their consent to be bound by this Agreement.
2. When giving their notification under paragraph 1 or, if so provided, at any time thereafter, Iceland and Norway shall make the declarations provided for in this Agreement.

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3. This Agreement shall enter into force on the first day of the third month following the day on which the Secretary-General of the Council of the European Union establishes that all formal requirements concerning the expression of consent by or on behalf of the EU and Iceland or Norway to be bound by the Agreement have been fulfilled.
4. The supply of personal data under this Agreement may not take place until the provisions of Chapter 6 of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, have been implemented in the national law of the States involved in such supply.
5. In order to verify whether this is the case for Iceland and Norway, an evaluation visit and a pilot run shall be carried out in respect of and under conditions and arrangements acceptable to those States, similar to those concluded in respect of Member States pursuant to Chapter 4 of the Annex to Council Decision 2008/616/JHA.
On the basis of an overall evaluation report the Council, acting unanimously, shall determine the date or dates as from which personal data may be supplied by Member States to Iceland and Norway pursuant to this Agreement.

Article 9

Accession

Accession by new Member States to the European Union shall create rights and obligations under this Agreement between those new Member States and Iceland and Norway.

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Article 10

Termination

1. This Agreement may be terminated at any time by one of the Contracting Parties. In the event of termination by either Iceland or Norway, this Agreement shall remain in force between the European Union and the State for which it has not been terminated. In the event of termination by the European Union, the Agreement shall lapse.
2. Termination of this Agreement pursuant to paragraph 1 shall take effect six months after the deposit of the notification of termination.

Article 11

Depository

1. The Secretary-General of the Council of the European Union shall act as the depository of this Agreement.
2. The depository shall make public information on any notification made concerning this Agreement.

Done at in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Icelandic, Italian, Latvian, Lithuanian, Maltese, Norwegian, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

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