



**Brussels, 27 February 2019
(OR. en)**

15823/18

**Interinstitutional File:
2018/0423 (NLE)**

**EURODAC 42
ENFOPOL 644**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Protocol to the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention regarding access to Eurodac for law enforcement purposes

PROTOCOL TO THE AGREEMENT
BETWEEN THE EUROPEAN COMMUNITY
AND THE KINGDOM OF DENMARK
ON THE CRITERIA AND MECHANISMS
FOR ESTABLISHING THE STATE RESPONSIBLE
FOR EXAMINING A REQUEST FOR ASYLUM LODGED IN DENMARK
OR ANY OTHER MEMBER STATE OF THE EUROPEAN UNION AND "EURODAC"
FOR THE COMPARISON OF FINGERPRINTS FOR THE EFFECTIVE APPLICATION
OF THE DUBLIN CONVENTION REGARDING ACCESS
TO EURODAC FOR LAW ENFORCEMENT PURPOSES

THE EUROPEAN UNION, hereinafter referred to as "the Union",

and

THE KINGDOM OF DENMARK, hereinafter referred to as "Denmark",

hereinafter jointly referred to as "the Parties",

CONSIDERING that on 10 March 2005 the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention¹ (hereinafter referred to as "the Agreement of 10 March 2005") was signed;

¹ OJ EU L 66, 8.3.2006, p. 38.

RECALLING that on 26 June 2013 the Union adopted Regulation (EU) No 603/2013 of the European Parliament and of the Council¹;

REFERRING to Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union (TFEU), pursuant to which Denmark did not take part in the adoption of Regulation (EU) No 603/2013 and is not bound by it or subject to its application;

RECALLING that the procedures for comparison and data transmission for law enforcement purposes as laid down in Regulation (EU) No 603/2013 do not constitute an amendment to the Eurodac *acquis* within the meaning of the Agreement of 10 March 2005 and therefore fall outside the scope of the Agreement of 10 March 2005;

CONSIDERING that a protocol should be concluded between the Union and Denmark to enable Denmark to participate in the law-enforcement-related aspects of Eurodac and therefore enable designated law enforcement authorities of Denmark to request the comparison of fingerprint data transmitted to the Central System of Eurodac by the other participating States;

¹ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ EU L 180, 29.6.2013, p. 1).

CONSIDERING that the application of Regulation (EU) No 603/2013 for law enforcement purposes to Denmark should also enable designated law enforcement authorities of the other participating States and Europol to request the comparison of fingerprint data transmitted to the Central System of Eurodac by Denmark;

CONSIDERING that the processing of personal data by the designated law enforcement authorities of the participating States for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences pursuant to this Protocol should be subject to a standard of protection of personal data under their national law which complies with Directive (EU) 2016/680 of the European Parliament and of the Council¹;

CONSIDERING that Directive (EU) 2016/680 constitutes a development of the provisions of the Schengen acquis under Title V of Part Three of the TFEU, and that on 26 October 2016 Denmark, in accordance with Article 4 of Protocol No 22 on the position of Denmark, notified the Commission that it will implement that Directive in its national law. Denmark should therefore apply that Directive and the further conditions set out in Regulation (EU) No 603/2013 as regards the processing of personal data by the designated authorities of Denmark for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences;

¹ 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 EU L 119, 4.5.2016, p. 89).

CONSIDERING that the further conditions set out in Regulation (EU) No 603/2013 as regards the processing of personal data by the designated authorities of the participating States, as well as by Europol, for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences should also apply;

CONSIDERING that access for the designated authorities of Denmark should be allowed only on condition that comparisons with the national fingerprint databases of the requesting State and with the automated fingerprinting identification systems of all other participating States under Council Decision 2008/615/JHA¹ did not lead to the establishment of the identity of the data subject. That condition requires the requesting State to conduct comparisons with the automated fingerprinting identification systems of all other participating States under that Decision which are technically available, unless that requesting State can demonstrate that there are reasonable grounds to believe that it would not lead to the establishment of the identity of the data subject. Such reasonable grounds exist in particular where the specific case does not present any operational or investigative link to a given participating State. That condition requires prior legal and technical implementation of that Decision by the requesting State with regard to dactyloscopic data, as it should not be permitted to conduct a Eurodac check for law enforcement purposes where those above steps have not first been taken;

¹ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ EU L 210, 6.8.2008, p. 1).

CONSIDERING that prior to searching Eurodac, designated authorities of Denmark should also, provided that the conditions for a comparison are met, consult the Visa Information System under Council Decision 2008/633/JHA¹;

CONSIDERING that the mechanisms regarding amendments provided for in the Agreement of 10 March 2005 should apply to all amendments regarding access to Eurodac for law enforcement purposes;

CONSIDERING that this Protocol is part of the Agreement of 10 March 2005,

HAVE AGREED AS FOLLOWS:

¹ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ EU L 218, 13.8.2008, p. 129).

ARTICLE 1

1. Regulation (EU) No 603/2013 shall be implemented by Denmark as regards the comparison of fingerprint data with those stored in the Central System of Eurodac for law enforcement purposes as defined in point (i) of Article 2(1) of that Regulation, and shall apply under international law in Denmark's relations with the other participating States.
2. The Member States of the Union except Denmark shall be considered as participating States within the meaning of paragraph 1 of this Article. They shall apply the provisions of Regulation (EU) No 603/2013 which relate to law enforcement access to Denmark.
3. Iceland, Liechtenstein, Norway and Switzerland shall be considered to be participating States within the meaning of paragraph 1 to the extent that an agreement similar to this Protocol is in force between them and the Union which recognises Denmark as a participating State.

ARTICLE 2

1. Directive (EU) 2016/680 shall apply as regards the processing of personal data by Denmark arising from the application of this Protocol.

2. In addition to paragraph 1, the conditions set out in Regulation (EU) No 603/2013 as regards the processing of personal data shall apply to Denmark in relation to the processing of personal data by its designated authorities for the purposes laid down in Article 1(2) of that Regulation.

ARTICLE 3

The provisions of the Agreement of 10 March 2005 regarding amendments shall apply to all amendments related to access to Eurodac for law enforcement purposes.

ARTICLE 4

1. This Protocol shall be ratified or approved by the Parties in accordance with their respective procedures.
2. This Protocol shall enter into force on the first day of the month following the notification by the Parties of the completion of their respective procedures required for this purpose.

3. This Protocol shall not apply before Chapter 6 of Decision 2008/615/JHA has been implemented by Denmark and the evaluation procedures under Chapter 4 of the Annex to Council Decision 2008/616/JHA¹ have been completed with regard to dactyloscopic data with regard to Denmark.

ARTICLE 5

1. Each Party may withdraw from this Protocol by giving notice to the other Party. That notice shall take effect six months after the date of such notice.

2. This Protocol shall cease to be effective if either the Union or Denmark withdraws from it.

3. This Protocol shall cease to be effective if the Agreement of 10 March 2005 ceases to be effective.

4. A withdrawal from or a termination of this Protocol shall not affect the continued application of the Agreement of 10 March 2005.

¹ Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ EU L 210, 6.8.2008, p. 12).

ARTICLE 6

This Protocol shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

Done at Brussels on

For the European Union

For the Kingdom of Denmark