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Interinstitutional Files:

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'I/A' ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Draft Council decision on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union and the Swiss Confederation 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, 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 crossborder crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities, and its Annex

- Adoption

Draft Council decision on the conclusion of the Agreement between the European Union and the Swiss Confederation 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, 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 crossborder crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities

- Request for consent of the European Parliament

Draft Council decision on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union and the Principality of Liechtenstein 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, 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, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities, and its Annex

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- Request for consent of the European Parliament

1. On 26 October 2015, the Commission submitted a recommendation for a Council Decision authorising the negotiations for the conclusion of agreements between the European Union, on the one part, and the Swiss Confederation and the Principality of Liechtenstein, on the other part, on the modalities of participation of those States in certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, of Council Decision 2008/616/JHA on the implementation of Council 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 'Prüm Decisions').
2. At its meeting on 1 December 2015, JHA Counsellors discussed the recommendation, in particular with regard to Protocol (21), annexed to the Treaty on the Functioning of the European Union (TFEU), and the UK position.
3. The United Kingdom notified to Commission and Council by letter on 22 January 2016 (5650/16) its wish to participate in the 'Prüm Decisions'. On 20 May 2016, the Commission confirmed, in accordance with Article 331(1) TFEU, the participation of the UK. Furthermore, the United Kingdom notified to Commission and Council by letter on 29 January 2016 (5760/16) its wish to take part in adoption and application of the above recommendation.
4. At its meeting on 26 January 2016, DAPIX were informed by the Council Legal Service on the state of play of the file. Apart from widening the scope of the negotiation to Council Framework Decision 2009/905/JHA (the 'Forensic Decision'), the revised draft recommendation (5988/16) related to the addition of the legal basis and clarified the position of Denmark, Ireland and the United Kingdom.
5. Ireland and the United Kingdom are bound by the 'Prüm Decisions' and Council Framework Decision 2009/905/JHA, and are therefore taking part in the adoption and application of the decisions mentioned in the subject of this note.

6. In accordance with Articles 1 and 2 of 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, Denmark is not taking part in the adoption of the decisions mentioned in the subject of this note and is not bound by it or subject to its application.
7. The recommendation was presented to COREPER and deemed agreed upon since no delegation raised any objection by 26 May 2016.
8. On 9 June 2016, the Council adopted on that basis the Decision authorising the negotiation for the conclusion of agreements between the EU, on the one part, and the Swiss Confederation and the Principality of Liechtenstein, on the other part, on the application of certain provisions of the 'Prüm Decisions' and the 'Forensic Decision', and gave the Commission the necessary negotiating directives (10700/17).
9. On 5 July 2017, the Decision, following its declassification in June 2017, has been forwarded to the European Parliament for information purposes in accordance with Article 218(10) TFEU.
10. The draft agreements negotiated by the Commission services on the basis of the above directives were amended at the DAPIX meeting of 16 April 2018. Delegations were consulted on the amended versions and since no objections were submitted by 30 April 2018, the amended versions of the agreements were deemed to be agreed upon.
11. The negotiations were successfully concluded with the initialling of the agreements on 24 May 2018.

12. On 31 January 2019, the Commission submitted to the Council:

- a proposal for a Council decision on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union and the Swiss Confederation 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, of Council Decision 2008/616/JHA on the implementation of Council 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 of Council Framework Decision 2009/905/JHA on accreditation forensic service providers carrying out laboratory activities (6251/19 + ADD 1),
- a proposal for a Council decision on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union and the Principality of Liechtenstein 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, of Council Decision 2008/616/JHA on the implementation of Council 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 of Council Framework Decision 2009/905/JHA on accreditation forensic service providers carrying out laboratory activities (6253/19 + ADD 1),
- a proposal for a Council decision on the conclusion of of the Agreement between the European Union and the Swiss Confederation 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, 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, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities (6249/19),

- a proposal for a Council decision on the conclusion of the Agreement between the European Union and the Principality of Liechtenstein 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, 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, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities (6248/19).
13. The draft Council decisions on the signing and on the conclusion of the above agreements were examined by JHA Counsellors at their meeting on 18 February 2019 and subsequently amended (6589/19, 6657/19, 6586/19; 6590/19, 6658/19, 6587/19).
 14. At their meeting on 12 April 2019, JHA Counsellors took note of the amended versions and since no objections were submitted by 16 April 2019, the drafts were deemed agreed upon.
 15. In accordance with Article 218(5) TFEU, the European Parliament is to be informed about the Decisions on the signing and the provisional application of said Agreements.
 16. In accordance with Article 218(6) TFEU, the consent of the European Parliament is required before the Council adopts the Decisions on the conclusion of the Agreements.
 17. In the light of the above, COREPER is asked to confirm the above draft Agreements and invite the Council to:
 - adopt the draft Council Decisions on the signing, on behalf of the Union, and on the provisional application of the Agreements as set out in documents 8740/19 and 8747/19 as well as the text of the Agreements as set out in 8744/19 and 8750/19 (texts finalised by lawyer linguists);
 - decide to inform the European Parliament on the Council Decisions on the signing and provisional application of certain provisions of the Agreements;

- decide to forward the draft Council Decisions on the conclusion of the Agreements as set out in 8730/19 and 8732/19 (texts finalised by lawyer linguists) to the European Parliament for its consent.
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