



**2016/0823(CNS)**

26.1.2017

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## **DRAFT REPORT**

on the draft Council implementing decision amending Decision 2009/935/JHA as regards the list of third States and organisations with which Europol shall conclude agreements  
(15778/2016 – C8-0007/2017 – 2016/0823(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Agustín Díaz de Mera García Consuegra

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	6



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council implementing decision amending Decision 2009/935/JHA as regards the list of third States and organisations with which Europol shall conclude agreements (15778/2016 – C8-0007/2017 – 2016/0823(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Council draft (15778/2016),
  - having regard to Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)<sup>1</sup>, and in particular Article 26(1)(a) thereof, pursuant to which the Council consulted Parliament (C8-0007/2017),
  - 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>2</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>3</sup>, as amended by Council Decision 2014/269/EU,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2017),
1. Approves the Council draft;
  2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  3. Asks the Council to consult Parliament again if it intends to substantially amend the text approved by Parliament;
  4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ L 121, 15.5.2009, p. 37.

<sup>2</sup> OJ L 325, 11.12.2009, p. 6.

<sup>3</sup> OJ L 325, 11.12.2009, p. 12.

## EXPLANATORY STATEMENT

Denmark is currently fully participating in Europol, which operates under the existing Council Decision (2009/371/JHA). Under the terms of Protocol No 22 to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark could not take part in the adoption of this new Europol Regulation and is not subject to its application. The new Europol Regulation will start to apply on 1 May 2017, on which date the existing Europol Council Decision will automatically be repealed. This means that by 1 May 2017, Denmark will not anymore be part of Europol and will not be able to participate in its activities, consult its databases or exchange data with it.

On 3 December 2015 Denmark held a referendum on converting its current inflexible opt-out on Justice and Home Affairs matters in Protocol No 22 into a more flexible selective opt-in, similar to that currently held by Ireland and the UK. However, the outcome of the referendum was negative (53.1 percent voting 'No', against 46.9 percent 'Yes').

Following the negative outcome of this referendum, informal discussions took place between the Danish authorities and the European Institutions in order to seek ways for Denmark to be as closely as possible associated to Europol.

These informal discussions led to a joint statement on 15 December 2016 by the President of the European Council, the President of the European Commission and the Prime Minister of Denmark. In this joint statement it is proposed, in order to minimise the negative effects of the Danish departure from Europol, that Denmark will be associated to Europol in the form of an operational cooperation agreement. In order to avoid any operational gaps, this cooperation agreement would need to be concluded between Europol and Denmark before 1 May 2017.

The legal route for this would entail 2 consecutive legislative procedures, whereby firstly Denmark will be placed on the list with which Europol shall conclude international cooperation agreements, and secondly the operational cooperation agreement between Europol and Denmark will be concluded. The European Parliament has to be consulted on both proposals.

This report concerns the first consultation, namely amending Decision 2009/935/JHA in order to place Denmark on the list of third States and organisations with which Europol shall conclude international cooperation agreements.

Your Rapporteur recommends to approve this proposal. Combatting cross-border serious and organised crime and international terrorism within the Union, necessitates close cooperation and the sharing of data between all European countries. A sudden departure of Denmark from Europol without a smooth transition regime into some form of an association between Denmark and Europol, could lead to operational gaps and reduce the EU's capacity to effectively fight organised crime and terrorism. It is therefore important to ensure a sufficient level of operational cooperation between Denmark and Europol including the exchange of relevant personal; data, subject to adequate safeguards and data protection.

At the same time, it should be clear that such a cooperation agreement with Denmark should be of a transitional nature and cannot in any way equal full membership of Europol, including by providing for direct access to Europol's databases, allowing for full participation in Europol's operational work or giving decision-making rights in the governing bodies of Europol. Finally, the rapporteur notes with satisfaction that according to the joint statement the proposed arrangement will be conditioned on Denmark's continued membership of the Schengen area, on Denmark's obligation to fully implement in Danish law the Data Protection Directive by 1 May 2017 and on Denmark's agreement to the application of the jurisdiction of the European Court of Justice and the competence of the European Data Protection Supervisor.