COUNCIL IMPLEMENTING DECISION (EU) 2017/290

of 17 February 2017

amending Decision 2009/935/JHA as regards the list of third States and organisations with which Europol shall conclude agreements

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) ([1]), and in particular point (a) of Article 26(1) thereof,

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 ([2]), and in particular Articles 5 and 6 thereof,

Having regard to the opinion of the European Parliament ([3]),

Whereas:

(1) On 30 November 2009 the Council adopted Decision 2009/935/JHA ([4]).

(2) Point (a) of Article 26(1) of Decision 2009/371/JHA confers on the Council implementing powers to determine the list of third States and organisations with which Europol is to conclude agreements. Pursuant to Decisions 2009/371/JHA and 2009/935/JHA, that list is set out in the Annex to Decision 2009/935/JHA.

(3) It is for Europol's Management Board to review the list when necessary and to decide whether to propose amendments thereto to the Council.

(4) Regulation (EU) 2016/794 of the European Parliament and of the Council ([5]) ('the Europol Regulation') will apply from 1 May 2017. Pursuant to Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not bound by the Europol Regulation or subject to its application. Therefore, as of 1 May 2017, Denmark will be regarded as a third country with respect to Europol.

(5) Given the importance attached by all sides to preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, it is important to ensure cooperation between Europol and Denmark on key matters so as to enhance the Union's resilience to security threats.

(6) In accordance with point (c) of Article 25(1) of the Europol Regulation, a cooperation agreement allowing for the exchange of personal data concluded, before 1 May 2017, between Europol and a third country in accordance with Article 23 of Decision 2009/371/JHA may constitute the basis for the transfer of personal data from Europol to a third country, insofar as such transfer is necessary for the performance of Europol's tasks.

(7) On 20 December 2016 Europol's Management Board decided to recommend that the Council add Denmark to the list, outlining the operational need to conclude a cooperation agreement with Denmark.

([1]) OJ L 121, 15.5.2009, p. 37.
([2]) OJ L 325, 11.12.2009, p. 6.
([3]) Opinion of 14 February 2017 (not yet published in the Official Journal).
([4]) Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements (OJ L 325, 11.12.2009, p. 12).
([5]) Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

(8) In order to avoid an operational gap as of 1 May 2017, when Denmark will no longer participate in Europol as a Member State, it is most important that Europol initiate the procedure for the conclusion of a cooperation agreement with Denmark as a third country without delay.

(9) Denmark is bound by Decision 2009/371/JHA and is therefore taking part in the adoption and application of this Decision, which implements Decision 2009/371/JHA.

(10) The United Kingdom and Ireland are bound by Decision 2009/371/JHA and are therefore taking part in the adoption and application of this Decision, which implements Decision 2009/371/JHA.

(11) Decision 2009/935/JHA should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In point 1 of the Annex to Decision 2009/935/JHA, the following entry is inserted:

'— Denmark'.

Article 2

This Decision shall enter into force on the date of its adoption.

It shall be published in the *Official Journal of the European Union*.

Done at Brussels, 17 February 2017.

For the Council
The President
E. BARTOLO