COUNCIL IMPLEMENTING DECISION (EU) 2017/946

of 18 May 2017

on the automated data exchange with regard to dactyloscopic data in Slovakia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland and replacing Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to 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 ([1]), and in particular Article 33 thereof,

Having regard to the opinion of the European Parliament ([2]),

Whereas:

(1) In accordance with Article 25(2) of Decision 2008/615/JHA, the supply of personal data provided for under that Decision may not take place until the general provisions on data protection set out in Chapter 6 of that Decision have been implemented in the national law of the territories of the Member States involved in such supply.

(2) Article 20 of Council Decision 2008/616/JHA ([3]) provides that the verification that the condition referred to in recital 1 has been met with respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA is to be done on the basis of an evaluation report based on a questionnaire, an evaluation visit and a pilot run.

(3) The overall evaluation reports, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning dactyloscopic data in Slovakia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland have been presented to the Council.

(4) By adopting Council Decision 2010/682/EU ([4]), the Council concluded that Slovakia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 8 November 2010, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(5) By adopting Council Decision 2010/758/EU ([5]), the Council concluded that Bulgaria has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 2 December 2010, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(6) By adopting Council Decision 2011/355/EU ([6]), the Council concluded that France has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 9 June 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

([1]) OJ L 210, 6.8.2008, p. 1.
([2]) Opinion of 5 April 2017 (not yet published in the Official Journal).
([3]) 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 L 210, 6.8.2008, p. 12).
([4]) Council Decision 2010/682/EU of 8 November 2010 on the launch of automated data exchange with regard to dactyloscopic data in Slovakia (OJ L 293, 11.11.2010, p. 58).
([5]) Council Decision 2010/758/EU of 2 December 2010 on the launch of automated data exchange with regard to dactyloscopic data in Bulgaria (OJ L 322, 8.12.2010, p. 43).
([6]) Council Decision 2011/355/EU of 9 June 2011 on the launch of automated data exchange with regard to dactyloscopic data in France (OJ L 161, 21.6.2011, p. 23).

(7) By adopting Council Decision 2011/434/EU ([1]), the Council concluded that the Czech Republic has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 19 July 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(8) By adopting Council Decision 2011/888/EU ([2]), the Council concluded that Lithuania has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 13 December 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(9) By adopting Council Decision 2012/46/EU ([3]), the Council concluded that the Netherlands has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 23 January 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(10) By adopting Council Decision 2012/446/EU ([4]), the Council concluded that Hungary has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 24 July 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(11) By adopting Council Decision 2012/672/EU ([5]), the Council concluded that Cyprus has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 25 October 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(12) By adopting Council Decision 2012/710/EU ([6]), the Council concluded that Estonia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 13 November 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(13) By adopting Council Decision 2013/153/EU ([7]), the Council concluded that Malta has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 21 March 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(14) By adopting Council Decision 2013/229/EU ([8]), the Council concluded that Romania has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 14 May 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(15) By adopting Council Decision 2013/792/EU ([9]), the Council concluded that Finland has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 16 December 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

([1]) Council Decision 2011/434/EU of 19 July 2011 on the launch of automated data exchange with regard to dactyloscopic data in the Czech Republic (OJ L 190, 21.7.2011, p. 72).
([2]) Council Decision 2011/888/EU of 13 December 2011 on the launch of automated data exchange with regard to dactyloscopic data in Lithuania (OJ L 344, 28.12.2011, p. 38).
([3]) Council Decision 2012/46/EU of 23 January 2012 on the launch of automated data exchange with regard to dactyloscopic data in the Netherlands (OJ L 26, 28.1.2012, p. 32).
([4]) Council Decision 2012/446/EU of 24 July 2012 on the launch of automated data exchange with regard to dactyloscopic data in Hungary (OJ L 202, 28.7.2012, p. 23).
([5]) Council Decision 2012/672/EU of 25 October 2012 on the launch of automated data exchange with regard to dactyloscopic data in Cyprus (OJ L 302, 31.10.2012, p. 11).
([6]) Council Decision 2012/710/EU of 13 November 2012 on the launch of automated data exchange with regard to dactyloscopic data in Estonia (OJ L 321, 20.11.2012, p. 61).
([7]) Council Decision 2013/153/EU of 21 March 2013 on the launch of automated data exchange with regard to dactyloscopic data in Malta (OJ L 86, 26.3.2013, p. 21).
([8]) Council Decision 2013/229/EU of 14 May 2013 on the launch of automated data exchange with regard to dactyloscopic data in Romania (OJ L 138, 24.5.2013, p. 11).
([9]) Council Decision 2013/792/EU of 16 December 2013 on the launch of automated data exchange with regard to dactyloscopic data in Finland (OJ L 349, 21.12.2013, p. 103).

(16) In its judgment of 22 September 2016 in Joined Cases C-14/15 and C-116/15, the Court of Justice of the European Union held that Article 25(2) of Decision 2008/615/JHA unlawfully lays down a requirement of unanimity for the adoption of measures necessary to implement that Decision. Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU were adopted on the basis of Article 25(2) of Decision 2008/615/JHA and consequently are vitiated by a procedural defect.

(17) With a view to ensuring the legal certainty of the receipt and supply of personal data pursuant to Decision 2008/615/JHA with regard to the Member States concerned by Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU, those Decisions should be replaced by this Decision.

(18) With a view to ensuring continued receipt and supply of personal data pursuant to Article 9 of Decision 2008/615/JHA, Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU cease to produce effects as from the date of entry into force of this Decision.

(19) For the same reason, the entry into force of this Decision should be without prejudice to the validity of automated data exchange carried out by the Member States pursuant to Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU.

(20) Moreover, the Member States which obtained personal data pursuant to Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU should continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

(21) Article 33 of Decision 2008/615/JHA confers upon the Council implementing powers with a view to adopting measures necessary to implement that Decision, in particular as regards the receipt and supply of personal data provided for under that Decision. As the conditions for triggering the exercise of such implementing powers have been met and the procedure in that regard has been followed, an implementing decision on the automated data exchange with regard to dactyloscopic data with regard to Slovakia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland should be adopted in order to allow those Member States to continue receiving and supplying personal data pursuant Article 9 of Decision 2008/615/JHA.

(22) Denmark is bound by Decision 2008/615/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA.

(23) The United Kingdom and Ireland are bound by Decision 2008/615/JHA and are therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of automated searching of dactyloscopic data, Slovakia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland shall continue to be entitled to receive and supply personal data pursuant to Article 9 of Decision 2008/615/JHA.

Article 2

1. Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU cease to produce effects as from the date of entry into force of this Decision, without prejudice to the validity of automated data exchange carried out pursuant to those Decisions by the Member States.

2. Member States which obtained personal data pursuant to the Decisions referred to in paragraph 1 shall continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

Article 3

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Decision shall apply in accordance with the Treaties.

Done at Brussels, 18 May 2017.

For the Council
The President
C. ABELA