II

(Non-legislative acts)

DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2020/1188

of 6 August 2020

on the launch of automated data exchange with regard to dactyloscopic data in the United Kingdom

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) In accordance with point 1.1 of Chapter 4 of the Annex to Decision 2008/616/JHA, the questionnaire drawn up by the relevant Council Working Group concerns each of the automated data exchanges and is to be answered by a Member State as soon as it believes it fulfils the prerequisites for sharing data in the relevant data category.

(4) The United Kingdom has completed the questionnaire on data protection and the questionnaire on dactyloscopic data exchange.

(5) A successful pilot run has been carried out by the United Kingdom with Germany.

(6) An evaluation visit has taken place in the United Kingdom, and a report on the evaluation visit has been produced by the German evaluation team and forwarded to the relevant Council Working Group.

(7) An overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning dactyloscopic data exchange, has been presented to the Council.

(8) On 2 December 2019, the Council, having noted the agreement of all Member States bound by Decision 2008/615/JHA, concluded that the United Kingdom has fully implemented the general provisions on data protection set out in Chapter 6 of Decision 2008/615/JHA. Furthermore, the Council requested that the United Kingdom review, by 15 June 2020, its policy of excluding suspect profiles from automated dactyloscopic data exchange, in the light of operational experience with dactyloscopic data exchange and *mutatis mutandis* of the explanations in the evaluation visit report relating to DNA data exchange.

([1]) OJ L 210, 6.8.2008, p. 1.
([2]) Opinion of 13 May 2020 (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).

(9) By letters of 15 and 19 June 2020, the United Kingdom notified the European Union of its Government's decision to include suspects' profiles in its automated biometric (DNA and, as appropriate, fingerprints) data exchanges within the shareable Prüm dataset and informed that it would begin the necessary action to implement its decision for all of the United Kingdom.

(10) Following the information provided by the United Kingdom in accordance with Council Implementing Decision (EU) 2019/968 ([4]), the United Kingdom has made available the DNA data of suspects in conformity with Decision 2008/615/JHA. In that regard, all DNA data available to law enforcement authorities of the United Kingdom form part of the shareable Prüm dataset that has been made available to law enforcement authorities of Member States, in full respect of the principle of availability. The principle of availability is also respected with regard to dactyloscopic data. No dactyloscopic data are excluded from biometric data exchanges with the United Kingdom.

(11) Therefore, for the purposes of automated searching of dactyloscopic data, the United Kingdom should be entitled to receive and supply personal data pursuant to Article 9 of Decision 2008/615/JHA.

(12) Article 33 of Decision 2008/615/JHA confers implementing powers upon the Council with a view to adopting measures necessary to implement that Decision, in particular as regards the receiving and supply of personal data provided for under that Decision.

(13) As the conditions for triggering the exercise of such implementing powers have been met and the procedure in this regard has been followed, an Implementing Decision on the launch of automated data exchange with regard to dactyloscopic data in the United Kingdom should be adopted in order to allow the United Kingdom to receive and supply personal data pursuant to Article 9 of Decision 2008/615/JHA.

(14) Denmark 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.

(15) Under the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ([5]), Union law applies to and in the United Kingdom until the end of the transition period. The United Kingdom is bound by Decision 2008/615/JHA and is therefore taking part in the application of this Decision which implements Decision 2008/615/JHA,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of automated searching of dactyloscopic data, the United Kingdom is entitled to receive and supply personal data pursuant to Article 9 of Decision 2008/615/JHA as from 11 August 2020 and in conformity with that Decision.

Article 2

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, 6 August 2020.

For the Council
The President
M. ROTH

([4]) Council Implementing Decision (EU) 2019/968 of 6 June 2019 on the launch of automated data exchange with regard to DNA data in the United Kingdom (OJ L 156, 13.6.2019, p. 8).

([5]) OJ L 29, 31.1.2020, p. 7.