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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**On the assessment of the Agreement on Operational and Strategic Cooperation between
the Kingdom of Denmark and the European Police Office**

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Introduction

The Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and the European Police Office (hereafter “the Agreement”)¹ establishes the legal framework for Denmark’s cooperation with Europol. Under Article 25 of the Agreement, the Commission is invited to assess the provisions of this Agreement, and in particular the operational effectiveness of the Agreement and Denmark’s compliance with the data protection provisions thereof.

Until 1 May 2017, Denmark participated fully in the Council Decision establishing the European Police Office (Europol)². Under Protocol (No 22) on the position of Denmark³, it has an opt-out of all EU Justice and Home Affairs legislation adopted after the Lisbon Treaty entered into force on 1 December 2009⁴. Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol)⁵ adopted in 2016 replaces the Council Decision. It became fully applicable on 1 May 2017. Because of the opt-out and due to a negative result of a national referendum held on 3 December 2015 on the question whether Denmark’s opt-out on Justice and Home Affairs matters should be changed, Denmark is unable to participate in the Regulation.

Following the referendum in Denmark on 3 December 2015, the President of the Commission, the President of the European Council and the Prime Minister of Denmark issued a Declaration⁶ on 15 December 2016, stating their agreement “*on the need for operational arrangements, minimising the negative impact of Denmark’s departure from Europol on 1 May 2017, for the mutual benefit of Denmark and the rest of the European Union in the combatting of cross border serious and organised crime and international terrorism. Such arrangements must be Denmark specific, and not in any way equal full membership of Europol, i.e. provide access to Europol’s data repositories, or for full participation in Europol’s operational work and database, or give decision-making rights in*

¹ <https://www.europol.europa.eu/publications-documents/agreement-operational-and-strategic-cooperation-between-kingdom-of-denmark-and-europol>.

² Council Decision (2009/371/JHA) of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009, p. 37.

³ OJ C 326, 26.10.2012, p. 299.

⁴ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306, 17.12.2007, p. 1. So far Denmark has not exercised the option provided for in Part IV of Protocol (No 22) which would allow it to participate fully in the Europol Regulation.

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.

⁶ Declaration by the President of the European Commission, Jean-Claude Juncker, the President of the European Council, Donald Tusk and the Prime Minister of Denmark, Lars Løkke Rasmussen, Brussels, 15 December 2016, Commission press release IP/16/4398.

the governing bodies of Europol. However, it should ensure a sufficient level of operational cooperation including exchange of relevant data, subject to adequate safeguards”.

The Agreement establishes the legal framework for Denmark’s cooperation with Europol called upon in the Declaration of 15 December 2016. It entered into force on 30 April 2017, thus avoiding a gap as a result of the change on 1 May 2017 of Denmark’s status from a Member State to a third country in its relation with Europol. On 27 April 2017, the Danish Parliament (Folketing) adopted Law No 411 on the European Union Agency for Law Enforcement Cooperation (Europol) allowing the Danish Government to conclude the Agreement. The European Parliament adopted a resolution on 27 April 2017.⁷ The Council gave Europol its authorisation to agree to the Agreement on 28 April 2017.⁸

The recitals to the Agreement make clear that it is intended to “*minimise the negative effects of the Danish departure from Europol*” by establishing cooperation at “*a level at least equivalent*” to that of other third countries that have concluded similar agreements with Europol (recital 3).

A particular feature of the Agreement is Denmark’s specific position as an EU and Schengen Member State. Denmark’s specific position as an EU Member State is reflected in recital 4 of the Agreement. Recital 5 states that Denmark is part of the Schengen area and has implemented fully in its national law the Schengen *acquis*. Furthermore, recital 6 outlines that Denmark is part of the so-called Nordic passport union together with other Nordic States, two of which are EU Member States and two of which are associated with the implementation of the Schengen *acquis* and its further development.

Preparation process for the assessment and the Report

- The Commission sent a questionnaire to the Danish Ministry of Justice and the Danish Data Protection Agency. The Danish Ministry of Justice, together with the Danish National Police, provided written draft replies to the questionnaire. The Danish Data Protection Agency thanked the Commission for having been given the opportunity to provide feedback to the questionnaire and informed the Commission that it had not looked into the way in which the Agreement had been implemented by the Danish National Police. It therefore took the view that at this point the Danish Ministry of Justice and Danish National Police were better placed to answer it.
- The Commission had exchanges with representatives from the Danish Ministry of Justice, the Danish National Police including its Data Protection Officer, the Danish Data Protection Agency, as well as with representatives from Europol, responsible for the application of the Agreement, including analysts who use and have access to the information exchanged under the Agreement, and from the European Data Protection Supervisor who oversees the processing of personal data at Europol.

⁷ European Parliament legislative resolution of 27 April 2017 on the draft Council implementing decision approving the conclusion by the European Police Office (Europol) of the Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and Europol (07281/2017 – C8-0120/2017 – 2017/0803(CNS)), P8_TA(2017)0136.

⁸ 7281/1/17 REV 1 of 28 April 2018.

- The Danish Ministry of Justice provided access to reports from the Ministry to the Danish Parliament (Folketing) on the status of the situation of the Danish Police in relation to Europol (covering the period of 1 May 2017 to December 2019).
- The findings of the Commission were laid down in the accompanying Staff Working Document which was also shared with the Danish Ministry of Justice and Europol, providing them with the opportunity to comment on inaccuracies and identify information which cannot be disclosed to public audiences.

Conclusions

The Agreement states in Article 25 that the assessment should in particular concern its operational effectiveness as well as Denmark's compliance with the data protection provisions thereof.

The assessment showed that the Agreement, which gives Denmark a special status, provides for a cooperation between Denmark and Europol that has met the overall objective of establishing cooperative relations between Denmark and Europol in the fight against terrorism and serious cross-border crime and has minimised the negative effects of the Danish departure from Europol as of 1 May 2017.

This is in particular due to the enhanced service that Denmark receives through dedicated Danish speaking seconded national experts for treating, under the authority of Europol, Danish requests to input, retrieve and cross-check data on a 24/7 basis. Both Denmark and Europol explicitly recognised that the secondment of Danish speaking national experts to Europol has proven to be a successful instrument in this respect. At the same time both parties also recognised that due to the limitations imposed by Article 10 (6) of the Agreement as regards the tasks of the Danish speaking seconded national experts in The Hague and in Denmark, there is room to improve the effectiveness of the cooperation.

The Agreement requires that Denmark applies the data protection safeguards set out in the Agreement, as well as the rules implementing the EU Law Enforcement Directive⁹. The Danish Law Enforcement Act is the instrument that intends to transpose the EU Law Enforcement Directive. It entered into force on 30 April 2017. The Danish National Police has designated a data protection officer for the processing of personal data by the Danish police within the scope of the Act. The Data Protection Officer has, inter alia, been entrusted with the task of monitoring compliance with the EU Law Enforcement Directive.

During the period under assessment, Denmark and Europol addressed a couple of data protection related issues. They related to information from Denmark which was corrected immediately after Denmark had received notifications from Europol on the matter.

The Danish National Police, supported by its Data Protection Officer, takes the view that Denmark has effectively implemented, and in practice applied, both the requirements of the

⁹ Directive (EU 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision, OJ L 119 of 4.5.2016, p. 89.

Law Enforcement Directive and the Agreement with regard to the protection of personal data received under the Agreement.

The Commission therefore considers that the Agreement has been effective in providing for operational arrangements, thus minimising the negative impact of Denmark's departure from Europol on 1 May 2017, for the mutual benefit of Denmark and the rest of the European Union in the combatting of cross border serious and organised crime and international terrorism.

The Commission also considers that the data protections provisions of the Agreement have been applied well.

The Commission has not found any limitations in the Agreement which hampers its effective implementation.