EUROPEAN
COMMISSION

Brussels, 13.12.2018
COM(2018) 828 final

ANNEX

ANNEX

to the

Proposal for a Council Decision

on the conclusion of a Protocol between the European Union, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland regarding the access to Eurodac for law enforcement purposes

ANNEX

to the

Proposal for a COUNCIL DECISION

on the conclusion of a Protocol between the European Union, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland regarding the access to Eurodac for law enforcement purposes

THE EUROPEAN UNION

and

THE SWISS CONFEDERATION,

and

THE PRINCIPALITY OF LIECHTENSTEIN

hereinafter referred to as 'the Parties',

(1) CONSIDERING that on 26 October 2004, the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (hereinafter: Agreement of 26 October 2004) was concluded[1].

(2) CONSIDERING that on 28 February 2008, the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (hereinafter: Protocol of 28 February 2008) was concluded[2].

(3) RECALLING that on 26 June 2013 the European Union adopted Regulation (EU) No 603/2013 of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (hereinafter: Regulation (EU) No 603/2013) [3].

1 OJ L 53, 27.2.2008, p. 5.
2 OJ L 160, 18.6.2011, p. 39.
3 OJ L 180, 29.6.2013, p. 1.

(4) RECALLING that the procedures for comparison and data transmission for law enforcement purposes as laid down in the Regulation (EU) No 603/2013 do not constitute a development building upon the provisions of Eurodac within the meaning of the Agreement of 26 October 2004 and the Protocol of 28 February 2008.

(5) CONSIDERING that a Protocol should be concluded between the European Union and the Swiss Confederation, hereinafter referred to as 'Switzerland', and the Principality of Liechtenstein, hereinafter referred to as 'Liechtenstein', to enable Switzerland and Liechtenstein to participate in the law-enforcement-related aspects of Eurodac and therefore enable designated law enforcement authorities in Switzerland and Liechtenstein to request the comparison of fingerprint data transmitted to the Eurodac Central System by the other participating States.

(6) CONSIDERING that the application of Regulation (EU) No 603/2013 for law enforcement purposes to Switzerland and Liechtenstein should also enable designated law enforcement authorities of the other participating States and Europol to request the comparison of fingerprint data transmitted to the Eurodac Central System by Switzerland and Liechtenstein.

(7) CONSIDERING that the processing of personal data by the designated law enforcement authorities of the participating States as well as by Europol for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences pursuant to this Protocol should be subject to a standard of protection of personal data under their national law which complies with 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 2008/977/JHA[4].

(8) CONSIDERING that the further conditions set out in Regulation (EU) No 603/2013 as regards the processing of personal data by the designated authorities of the participating States as well as by Europol for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences should also apply.

(9) CONSIDERING that access for the designated authorities of Switzerland and Liechtenstein should be allowed only on condition that comparisons with the national fingerprint databases of the requesting State and with the automated fingerprinting identification systems of all other participating States under 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[5] did not lead to the establishment of the identity of the data subject. That condition requires the requesting State to conduct comparisons with the automated fingerprinting identification systems of all other participating States under Council Decision 2008/615/JHA which are technically available, unless that requesting State can justify that there are reasonable grounds to believe that it would not lead to the establishment of the identity of the data subject. Such reasonable grounds exist in particular where the specific case does not present any operational or investigative link to a given participating State. That condition requires prior legal and technical implementation of Council Decision 2008/615/JHA by the requesting State with regard to dactyloscopic data, as it should not be permitted to conduct a Eurodac check for law enforcement purposes where those above steps have not been first taken.

---

4 OJ L 119, 4.5.2016, p. 89.

5 OJ L 210, 6.8.2008, p. 1.

(10) CONSIDERING that prior to searching Eurodac, designated authorities of Switzerland and Liechtenstein should also, provided that the conditions for a comparison are met, consult the Visa Information System under Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences[6].

(11) CONSIDERING that identical mechanisms regarding new legislation and new acts or measures as provided for in the Agreement of 26 October 2004 and the Protocol of 28 February 2008, including the role of the Mixed Committee, should apply to all new legislation and new acts or measures regarding the access to Eurodac for law enforcement purposes.

HAVE AGREED AS FOLLOWS:

Article 1

1. Regulation (EU) No 603/2013 shall be implemented by Switzerland as regards the comparison of fingerprint data with those stored in the Eurodac Central System for law enforcement purposes, and applied in its relations with Liechtenstein and with the other participating States.

2. Regulation (EU) No 603/2013 shall be implemented by Liechtenstein as regards the comparison of fingerprint data with those stored in the Eurodac Central System for law enforcement purposes, and applied in its relations with Switzerland and with the other participating States.

3. The Member States of the European Union except Denmark shall be considered as participating States within the meaning of paragraphs 1 and 2. They shall apply the provisions of Regulation (EU) No 603/2013 which relate to law enforcement access to Switzerland and Liechtenstein.

4. Denmark, Iceland and Norway shall be considered as participating States within the meaning of paragraphs 1 and 2 to the extent that respective agreements similar to the present agreement are applied between them and the European Union which recognize Switzerland and Liechtenstein as participating States.

Article 2

1. This Protocol shall not enter into force with regard to Switzerland before the provisions of Directive (EU) 2016/680 as well as the conditions set out in Regulation (EU) No 603/2013 as regards the processing of personal data are implemented and applied by Switzerland in relation to the processing of personal data by its national authorities for the purposes laid down in Article 1(2) of Regulation (EU) No 603/2013.

2. This Protocol shall not enter into force with regard to Liechtenstein before the provisions of Directive (EU) 2016/680 as well as the conditions set out in Regulation (EU) No 603/2013 as regards the processing of personal data are implemented and applied by Liechtenstein in relation to the processing of personal data by its national authorities for the purposes laid down in Article 1(2) of Regulation (EU) No 603/2013.

[6] OJ L 218, 13.8.2008, p. 129.

Article 3

The provisions of the Agreement of 26 October 2004 and the Protocol of 28 February 2008 regarding new legislation and new acts or measures, including those concerning the Mixed Committee, shall apply to all new legislation and new acts or measures related to the access to Eurodac for law enforcement purposes.

Article 4

1. This Protocol shall be ratified or approved by the Parties. Instruments of ratification or approval shall be deposited with the Secretary General of the Council of the European Union, who shall be the depositary of this Protocol.

2. This Protocol shall enter into force on the first day of the month following notification by the depositary to the Parties that the instrument of ratification or approval of the European Union and of at least one of the other Parties has been deposited.

3. This Protocol shall not apply with regard to Switzerland before the provisions of Chapter 6 of Council Decision 2008/615/JHA have been implemented by Switzerland and until the evaluation procedures under Chapter 4 of the Annex of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime[7] have been completed with regard to dactyloscopic data with regard to Switzerland.

4. This Protocol shall not apply with regard to Liechtenstein before the provisions of Chapter 6 of Council Decision 2008/615/JHA have been implemented by Liechtenstein and until the evaluation procedures under Chapter 4 of the Annex of Council Decision 2008/616/JHA have been completed with regard to dactyloscopic data with regard to Liechtenstein.

Article 5

1. Each Party may withdraw from this Protocol by sending a declaration in writing to the depositary. This declaration shall take effect six months after being deposited.

2. The Protocol shall cease to be effective if either the European Union or both Switzerland and Liechtenstein have withdrawn from it.

3. This Protocol ceases to be effective with respect to Switzerland if the Agreement of 26 October 2004 ceases to be effective with respect to Switzerland.

4. This Protocol ceases to be effective with respect to Liechtenstein if the Protocol of 28 February 2008 ceases to be effective with respect to Liechtenstein.

5. A withdrawal from this Protocol by one Party or its suspension or termination with respect to one Party will affect neither the Agreement of 26 October 2004, nor the Protocol of 28 February 2008.

Article 6

This Protocol shall be drawn up in one single original in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian,

[7] OJ L 210, 6.8.2008, p. 12.

Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

The original shall be deposited with the depositary, who shall establish a certified true copy for each of the Parties.

Done at Brussels on