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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union vis-à-vis the United Kingdom of Great Britain and Northern Ireland regarding the determination under Article 540(2) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, of the date from which personal data under Article 537 of that Agreement may be supplied by Member States to the United Kingdom

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision of the Council establishing the position to be taken on the Union's behalf, in order for the Union to make a declaration setting out the date from which personal data relating to automated searching of vehicle registration data may be supplied by Member States to the United Kingdom, in accordance with Article 540(2) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland (hereafter: 'United Kingdom'), of the other part.

2. CONTEXT OF THE PROPOSAL

2.1. The Trade and Cooperation Agreement

The Trade and Cooperation Agreement ('the Agreement' or 'TCA')¹ establishes the basis for a broad relationship between the Union and the United Kingdom, within an area of prosperity and good neighbourliness, characterised by close and peaceful relations based on cooperation, respectful of the Parties' autonomy and sovereignty. The Agreement entered into force on 1 January 2021.

The Agreement provides for cooperation between the Parties on the automated searching of DNA profiles, dactyloscopic data and vehicle registration data. Such cooperation may however begin only once the Union has verified that the United Kingdom has fulfilled the conditions set out in Article 539 of and Annex 39 to the TCA.

2.2. The envisaged act of the Union

Article 540(2) of the Agreement provides that the Union is to determine the date from which personal data relating to automated searching of vehicle registration data may be supplied by Member States to the United Kingdom pursuant to Title II ('Exchange of DNA, fingerprints and vehicle registration data') of Part Three of the Agreement.

Pursuant to Annex 39 to the Agreement, the Council is to adopt a decision on the basis of an evaluation whether the United Kingdom has met the required conditions for automated searching of vehicle registration data. The decision is to be based on an overall evaluation report, summarising the results of a questionnaire, an evaluation visit and, where applicable, a pilot run.

The decision will become binding, under international law, on the United Kingdom by way of a unilateral declaration by the Union, in accordance with Article 540(2) of the Agreement. The unilateral declaration of the Union needs to be notified to the United Kingdom.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

Following an evaluation visit to the United Kingdom from 17 to 20 June 2025, the evaluation team concluded in its report that the cooperation with the United Kingdom on vehicle registration data meets the relevant requirements. The report was submitted to the Council on 17 October 2025 and paved the way for the Council to allow the Union to declare that

¹ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 149, 30.4.2021, p. 10.

Member States may supply personal data regarding vehicle registration data to the United Kingdom as referred to in Article 540(2) of the TCA.

In view of the above, the Commission proposes to set 1 March 2026 as the date from which Member States may supply, to the United Kingdom, personal data regarding vehicle registration data as referred to in Article 537 of the Trade and Cooperation Agreement.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*².

4.1.2. Application to the present case

Article 540(1) and (2) of the TCA provides that where the United Kingdom has met the conditions set out in Article 539 and Annex 39 of the TCA, the Union shall determine the date from which Member States may supply, to the United Kingdom, personal data regarding vehicle registration data. Whilst such determination is a unilateral act of the Union and not an act to be adopted by any of the bodies set up by the Agreement, it nevertheless produces legal effects. Therefore, the Union position underlying that determination should be established in accordance with Article 218(9) TFEU, applied by analogy.

The legal effects of the declaration are binding under international law and fall completely on the Union, as a party to the Agreement. Therefore, in accordance with Article 3(2) TFEU, the Union has exclusive competence in this matter.

The determination of the relevant date as referred to in Article 540(2) of the Agreement does not lead to the framework of that agreement being supplemented or amended.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

² Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.2.2. *Application to the present case*

The envisaged act pursues objectives and has components in the area of data protection and police cooperation. These elements of the envisaged act are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Article 16(2) and Article 87(2)(a) TFEU.

The Agreement is binding on all the Member States by virtue of Council Decision (EU) 2021/689³, which is based on Article 217 TFEU as its substantive legal basis.

4.3. **Conclusion**

The legal basis of the proposed decision should be Article 16(2) and Article 87(2)(a) TFEU, in conjunction with Article 218(9) TFEU.

³ Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 149, 30.4.2021, p. 2, ELI: <http://data.europa.eu/eli/dec/2021/689/oj>).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 16(2) and 87(2), point (a), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland (hereafter: ‘the United Kingdom’), of the other part (‘the Trade and Cooperation Agreement’) was concluded by the Union by Council Decision (EU) 2021/689 of 29 April 2021¹ and entered into force on 1 January 2021.
- (2) Pursuant to Article 540(2) of the Trade and Cooperation Agreement, the Union is to determine the date from which personal data relating to automated searching of vehicle registration data may be supplied by Member States to the United Kingdom, on the basis of an overall evaluation report, summarising the results of the questionnaire, the evaluation visit and, where applicable, a pilot run.
- (3) By letter of 20 May 2024, the United Kingdom informed the Commission, through the Specialised Committee on Law Enforcement and Judicial Cooperation established by the Trade and Cooperation Agreement, that it had implemented the obligations imposed under Title II of Part Three of the Trade and Cooperation Agreement in respect of vehicle registration data. The United Kingdom also made declarations and designations in accordance with Article 22 of Chapter 0 of Annex 39 of the Trade and Cooperation Agreement and expressed its readiness to be evaluated for the exchange of vehicle registration data between Member States and the United Kingdom.
- (4) On 25 October 2024, the Commission sent the United Kingdom the questionnaire relating to the automated exchange of vehicle registration data. On 11 November

¹ Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 149, 30.4.2021, p. 2, ELI: <http://data.europa.eu/eli/dec/2021/689/oj>).

2024, the United Kingdom provided the Commission with its answers to the questionnaire. These answers were provided to the evaluation team and submitted to the Council Working Party on JHA Information Exchange and the Council Working Party on the United Kingdom on 13 November 2024.

- (5) Pursuant to Article 2 of Chapter 4 of Annex 39 to the Trade and Cooperation Agreement, a pilot run had to be carried out by the UK with one or more EU Member States already exchanging vehicle registration data under Council Decisions 2008/615/JHA² and 2008/616/JHA³, shortly before or shortly after the evaluation visit. The pilot run was successfully completed shortly before the evaluation visit.
- (6) Pursuant to Article 3 of Chapter 4 of Annex 39 to the Trade and Cooperation Agreement, the United Kingdom underwent an evaluation with regard to automated searching of vehicle registration data from 17 to 20 June 2025. The evaluation report concluded that the aspects enabling automated exchange of vehicle registration data with the Member States pursuant to the Trade and Cooperation Agreement, Part Three Title II and Annex 39, have been successfully implemented in the United Kingdom, at legal, operational and technical levels.
- (7) Pursuant to Article 5 of Chapter 4 of Annex 39 to the Trade and Cooperation Agreement, the overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run, was presented to the Council on 17 October 2025.
- (8) Since the United Kingdom fulfilled the conditions set out in Article 539 of and Annex 39 to the Trade and Cooperation Agreement, the Union should, pursuant to Article 540(2) of the Trade and Cooperation Agreement, determine the date from which Member States may supply, to the United Kingdom, personal data regarding vehicle registration data as referred to in Article 537 of the Trade and Cooperation Agreement. Such data may be supplied as from 1 March 2026. The Union should notify the United Kingdom of this position in the Specialised Committee on Law Enforcement and Judicial Cooperation. In those circumstances, it is therefore appropriate to establish the position to be taken on the Union's behalf vis-à-vis the United Kingdom regarding the determination of that date.
- (9) The Trade and Cooperation Agreement is binding on all the Member States by virtue of Council Decision (EU) 2021/689, which is based on Article 217 TFEU as its substantive legal basis.
- (10) Denmark and Ireland are bound by Article 540 of the Trade and Cooperation Agreement by virtue of Council Decision (EU) 2021/689 and are therefore taking part in the adoption and application of this Decision which implements the Trade and Cooperation Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in respect of the date from which personal data regarding vehicle registration data under Article 537 of the Trade and Cooperation Agreement

² 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 (OJ L 210, 6.8.2008, p. 1).

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).

may be supplied by Member States to the United Kingdom is set out in the unilateral declaration of the Union attached to this Decision.

Article 2

The United Kingdom shall be notified of the Union's position referred to in Article 1 in the Specialised Committee on Law Enforcement and Judicial Cooperation established by the Trade and Cooperation Agreement.

Article 3

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

Done at Brussels,

For the Council
The President