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

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stepping up of cross-border cooperation, particularly in combating terrorism and cross-
border crime (the ‘Prüm Decision’)**

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1. INTRODUCTION

The purpose of this report is to take stock of the situation more than four years after the adoption of Council Decision 2008/615/JHA and more than one year after the deadline of 26 August 2011 for its full implementation. Originally, this report was meant not only to assess implementation but also to reflect on recommendations for further development of the instrument (cf. Article 36(4)). Since implementation is lagging behind considerably, the Commission decided not to consider further developments before full implementation. By doing so, the Commission aims to avoid further slowing down implementation efforts and to facilitate swift implementation in a legally stable environment.

Nonetheless, the state of implementation is insufficient and the Commission therefore invites Member States to make all efforts necessary to implement the Decision in full.

Although the experiences of operational¹ Member States have proven the added value of the instrument, some problems have emerged. Therefore this report, although focusing on implementation, will also reflect on the main difficulties in the operation of the instrument.

To prepare this report, the Commission circulated a questionnaire (‘the Prüm questionnaire’) to which 25 Member States (all except MT and PT) replied. Information is also drawn from:

- the Joint Prüm post-deadline questionnaire of the Polish Council Presidency and the Mobile Competence Team (MCT)² (doc CM 4285/11);
- the semi-annual report on Prüm implementation (doc 17761/11);
- discussions at DAPIX³ and in Prüm subgroups;
- discussions for developing the European Information Exchange Model (EIXM);
- contacts and meetings with lead experts in DNA, fingerprint and VRD data exchange, with MCT and with the Prüm helpdesk⁴.

¹ For the term ‘operational’ see 2. (d).

² MCT is a Commission-funded German project aimed at supporting non-operational Member States in implementing the Prüm Decisions (2011 to 2013).

³ Council Working Group on data protection and information exchange.

⁴ For MCT see footnote 2; for Prüm helpdesk see point 5.2.3.

2. THE INSTRUMENT

The Convention on the stepping up of cross-border cooperation, also called the 'Prüm Convention', was agreed by 7 European countries on 27 May 2005. Additional countries have subsequently acceded to the Convention (BG, RO, SI, FI, HU, EE, SK).

On 23 June 2008, important parts of the Convention were transformed into EU law when Council Decision 2008/615/JHA⁵ was adopted. At the same time, the Council adopted Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA⁶ (together, both Decisions are referred to as 'the two Prüm Decisions').

Iceland and Norway were associated with the two Prüm Decisions in November 2009 when they signed the agreement on the application of certain provisions of the Council Decisions.

Elements of the Prüm Decision

The Prüm Decision consists of 4 elements:

(a) Automated search of data

The provisions for automated searching and comparison of data from national data files in the area of DNA, dactyloscopic data (fingerprints) and vehicle registration data (VRD) are mainly in Chapter 2. This part is not only a far-reaching step in the area of law-enforcement information exchange but also the most complex part to implement.

(b) Information exchange for the prevention of offences

Chapters 3 and 4 contain provisions regarding the prevention of offences in the context of major events with a cross-border dimension and regarding possible terrorist offences.

(c) Police cooperation

Chapter 5 provides for stepping up cross-border police cooperation, including the possibility to exercise executive powers on another Member State's territory.

(d) Data protection

Chapter 6 contains comprehensive specific data protection rules for the application of the Decision.

The term "operational" in this report means that the Council has adopted a Decision allowing a Member State to exchange a certain type of data and refers only to an initial capacity for automated data sharing. Before the Council can adopt this Decision, a Member State is required to undergo evaluation by experts of other Member States.⁷

⁵ OJ L 210, 6.8.2008, p. 1.

⁶ OJ L 210, 6.8.2008, p. 12.

⁷ This provision does not apply to those Member States where the supply of personal data started pursuant to the Prüm Convention.

3. STATE OF IMPLEMENTATION

DNA data

Besides the 18 Member States (as at 31 October 2012) listed in the annex, a further 5 have indicated that they are considerably advanced in the required steps for the automated exchange of DNA data and are likely to become operational in early 2013. Whereas the situation in this area gave cause for concern at the legal deadline for implementation in August 2011, it has since then remarkably improved. However, 4 Member States (EL, IE, IT, UK) still need to step up their efforts significantly.

Fingerprints

The area of fingerprint data has the highest number of Member States seriously lagging behind. As at 31 October 2012, only 14 Member States were ready for searches in their automated fingerprint identification systems (AFIS) by other Member States. Another 7 are expected to complete their technical implementation and be ready for evaluation in early 2013. For 6 Member States (EL, IE, IT, PL, PT, UK) it remains unclear when they will go operational according to the information available to the Commission.

Vehicle Registration Data

As at 31 October 2012, only 13 Member States were operational in the area of VRD. However, fast progress can be expected for a number of additional Member States. Another 4 have passed or are ready for Council evaluation, and for 7 serious efforts can be observed. Only 3 Member States (EL, PT, UK) either have not undertaken any noteworthy activities or are encountering lasting difficulties. Altogether, the picture for VRD is promising, since it is technically the easiest to connect to all other operational partners once a Member State is operational.

Implementation of Chapters 3, 4 and 5

All Member States except one have designated national contact points under Chapters 3 and 4 (Articles 15 and 16). Therefore it can be assumed that they have functionally implemented these chapters. As regards Chapter 5, 5 Member States replied to the Prüm questionnaire that legal or administrative provisions were not yet in place⁸.

The implementation of these chapters is considerably advanced compared to the automated data exchange provisions, since there are no costly and time-consuming technical installations required. Given that the deadline for these chapters had already elapsed on 26 August 2009, the Member States that have not yet done so should put in place the national requirements as soon as possible and inform the General Secretariat of the Council and the Commission.

Data protection provisions

The exchange of data under the Prüm Decision may only take place when all data protection provisions of Chapter 6 have been implemented into national law. This is examined by experts of other Member States as part of the evaluation procedure through a questionnaire⁹.

⁸ Information from national declarations about practical aspects of cooperation is in some cases contained in the 'manual on cross-border operations' (doc. 10505/4/09).

⁹ Council document 6661/1/09.

By its Decision to allow a Member State the exchange of personal data, the Council acknowledges that this Member State complies with all required data protection provisions.

As at 31 October 2012 the following Member States had not yet submitted the reply to this questionnaire: DK, EL, IE, IT. At the same time only IT and EL had not yet complied with the requirement¹⁰ to indicate the independent data protection authority responsible for the Prüm data exchange.

4. REASONS FOR DELAYS IN IMPLEMENTATION

4.1. Technical difficulties

The Polish Presidency collected comprehensive data on the reasons for delays in implementation in 2011. The results were reflected in the semi-annual Presidency report of 28 November 2011. In summary, the main reasons for delays were technical in nature and caused by a lack of human and financial resources in the Member States.

Although several Member States have managed to overcome these problems in the meantime, it can be assumed that the nature of the problem has not changed fundamentally since 2011. This assumption was confirmed during discussions in the DAPIX subgroups and in bilateral contacts between the Commission and national and lead experts.

4.2. Funding

According to the semi-annual report, financing was a serious problem for implementation in 10 non-operational Member States. Of those, 6 have since submitted applications for EU funding under the Prevention of and Fight against Crime (ISEC) programme. At the same time, a number of Member States have still not yet sought financial support, including those that are lagging in implementation.

The number of Prüm-related ISEC applications reached a new peak in 2011 with 9 contracted projects and another 6 still being evaluated as of 30 September 2012.

EU funding for Prüm-related ISEC projects up to August 2012 totals EUR 6.2 million, with another EUR 5.7 million for already contracted but not yet completed actions. Pending applications from late 2011 represent another potential EUR 4.9 million.

The Commission will continue making EU funding available for implementation under the ISEC programme in 2013.

4.3. Conclusion

Implementing the two Prüm Decisions poses a number of administrative, technical and financial challenges. At the same time, there are several possibilities to seek support if needed: besides EU funding, there is the MCT and the Prüm helpdesk at Europol and, last but not least, there are a number of operational Member States that now have considerable experience in running the Prüm instrument and which can be consulted for advice.

Bearing in mind the indicated technical problems and scarce resources, it is surprising that non-operational Member States have been reluctant to request support from the MCT.

¹⁰ See Article 30(5) of the Prüm Decision.

Given the various possibilities to obtain support and the long period of time that has elapsed since the adoption of the two Prüm Decisions, it is hard to see any reasons which could justify lack of implementation. What is needed above all seems to be political will and appropriate prioritisation to overcome barriers at national level.

Prüm was adopted under the former third pillar, so the usual rules for control of national implementation do not apply during a transitional period. As of December 2014, however, the Commission will have the possibility of using infringement proceedings¹¹.

5. USE OF THE INSTRUMENT

5.1 Automated information exchange under Chapter 2

For a growing group of Member States, Prüm has become a routine tool in investigating crime with a potential cross-border dimension.

Two years after the Commission's mapping exercise with national and EU experts to look at how information exchange worked in practice revealed quite a positive attitude among most Member States towards Prüm, this result was confirmed by the replies to the Prüm questionnaire. However, this finding is not always matched by the pace of action taken in some Member States to implement the instrument.

According to the questionnaire, more than half of the competent authorities in Member States see an enormous added value in the areas of VRD and DNA data exchange for the prevention and investigation of criminal offences. For fingerprints, about 40% of respondents attach an enormous value to the instrument while more than 50% consider it to add at least some value.

The procedural efficiency of the mechanisms is considered very good or good for VRD by almost all respondents answering this question. The picture is less homogeneous for DNA and fingerprints: for both, efficiency is considered only acceptable or even inadequate by about 30% (see 5.2.2).

Statistics

In many Member States, the authority recording Prüm matches is not the same as that using the data for investigations. And often only a third authority, such as the prosecutor's office, is able to assess the value of a certain piece of information originating in the Prüm exchange. Nevertheless, appropriate statistical data are crucial for a comprehensive evaluation. Assessing the actual impact of the Prüm Decisions is hardly possible without such data.

Within the DAPIX Working Group, different possible options for statistic models were discussed. Due to the administrative difficulties mentioned above, the majority of Member States have opted for a model focusing on the number of matches between data sets. Although this is a reasonable interim solution, additional efforts will be required in the future to better reflect the use of these matches in investigations.

2011 was the first year for which comparable statistics were collected. The collected data showed that the accuracy of statistics for all three data types still needs to be improved.

¹¹ Protocol No 36 TFEU.

Nonetheless, the results based on currently available figures are promising and demonstrate that the operational authorities are already making significant use of Prüm¹²:

- Total verified matches for fingerprints in 2011: **2 553**
- Total DNA matches in 2011 according to current model: **20 719**
- Total VRD requests in 2011 for which information was found: **260 253**¹³

Individual cases where automated DNA or FP searches were conducted certainly cannot replace exact figures. Still, they give an insight into the kind of investigation where Prüm can significantly contribute to success. The following example from Germany illustrates the value of Prüm in a cross-border context:

In the late summer of 2011 a man was found stabbed to death in a north-western German city. On the crime scene, police experts discovered a fingerprint on a door frame in the apartment where the man had been found. Although there was no obvious link to another country, an automated Prüm search led to a hit in the Bulgarian AFIS database. The follow-up information requested from Bulgaria the following day was sent within three hours and was immediately entered into the Schengen Information System. Already the next day the individual concerned was arrested in Austria.

5.2 Room for improvement

Despite the general appreciation by investigators, a number of difficulties emerged during the early days of operation. The most important are discussed in this section.

5.2.1 Post-hit follow-up

Article 5 (for DNA) and Article 10 (for fingerprints) stipulate that ‘(...) the supply of further available personal data (...) shall be governed by the national law, including the legal assistance rules, of the requested Member State.’

Although the Prüm Decisions do not contain detailed provisions for following up a match between data sets (also called a ‘hit’), this has turned out to be a key issue. The automated search function is an enormous advance. But without a proper follow-up, ‘hits’ have hardly any meaning for investigators.

In the Prüm questionnaire, 18 out of 24 Member States generally point to the need to improve the follow-up to Prüm hits, one third focusing on national structures while a majority sees a need for action primarily at EU level.

Some experts criticise the lack of any standardisation. For managing follow-up requests roughly equal use is made of the Europol and Interpol channels while only a few Member States prefer the SIRENE offices or bilateral liaison officers. In some Member States the choice depends on the type of data; in other cases it depends on the crime phenomenon. In any event it is quite a heterogeneous picture, which according to experts sometimes leads to delays.

¹² Doc. 11367/12.

¹³ The imbalances between these figures do not reflect the overall importance of the individual data types but the fact that different data types are used in differing ways in police practice.

Another issue is the establishment of contact points: proposals range from establishing specific contact points for Prüm follow-up to integrating the mechanisms within the national single points of contact (SPOCs), as outlined in the EIXM Communication.

The potential for simplification through technical solutions has also been discussed. Here, it is noteworthy that the Prüm follow-up procedure has been selected as a pilot project between Belgium, Germany and Poland under the UMF II programme¹⁴. This programme, largely funded by the Commission and managed by Europol, aims to establish a common framework for structured cross-border information exchange between law enforcement authorities, including a common semantic information model and exchange format.

The Commission's Communication on the European Information Exchange Model (EIXM) touches on these issues and makes relevant recommendations.

5.2.2 Technical and administrative specifications for implementation

Other aspects hampering the use of Prüm relate to a number of specifications for automated data exchange laid down in the Prüm Implementing Decision 2008/616/JHA.

A considerable number of Member States consider that the matching rules, in particular for DNA data, are not fully satisfactory and should be designed in a better way so as to avoid matches that are identified as false upon subsequent verification.

Another problem commonly raised by experts is seen in the specifications concerning the interface control document (ICD) for fingerprint exchange, which leaves too much room for interpretation in its current version and thus can lead to technical incompatibilities. Moreover, more efficient use of limited search capacities in the area of fingerprint data is suggested by some Member States to ease the danger of overloading national systems. They propose that capacities not used by one Member State should be available for use by others, whereby the Member State receiving the request should itself indicate when the limit of its search capacity is reached.

A few Member States have expressed concerns regarding national capacities for verifying transmitted possible matches (candidates) after a request with fingerprint data. The more Member States become operational in this area, the more staff resources need to be available for the required manual verification of hits to avoid a situation where this requirement constitutes a limitation on fingerprint data exchange.

While they do not justify failure to implement the Prüm Decisions, these difficulties might hamper the implementation efforts of some Member States that are not yet operational. Improved functioning of the system would create an even stronger incentive for swift implementation (see below for recommendations).

5.2.3 Mobile Competence Team (MCT) and Prüm helpdesk at Europol

Both the MCT and the Prüm helpdesk set up at Europol in January 2012 support Member States in implementing and running the system. The MCT mainly focuses on first-line support for implementing the exchange of DNA and fingerprint data while the helpdesk provides support to operational Member States.

¹⁴ UMF II stands for the second project on a Universal Message Format (doc. 7753/10).

Both have developed a series of activities to address the difficulties described above in section 5.2.2. For this purpose, informal expert groups (so-called focus groups) have been set up. DNA matching rules and the interpretation of the fingerprint ICD are dealt with in dedicated focus groups. Software migration management and the facilitation of test procedures as well as security certificate management for testing and running the system among operational participants have been identified as relevant fields for coordination for the Prüm helpdesk. Another is to improve the post-hit follow-up. Furthermore, the helpdesk has established a Europol Platform for Experts (EPE) in order to facilitate the sharing of relevant knowledge. All activities currently carried out by the MCT are planned to be transferred to the helpdesk after the end of the MCT project in July 2013, if the tasks are still required by then.

5.3 Police cooperation and information exchange (Chapters 3 to 5)

The general appreciation among Member States for the provisions under these chapters is high. In their replies to the Prüm questionnaire, Member States express the following opinions:

Chapter 3 (major events) is considered by Member States to be

very useful 13

useless by 3

in between 5 (4 MS not replying to this section)

Chapter 4 (measures to prevent terrorist offences) is considered by Member States to be

very useful 8

useless by 5

in between 6 (6 MS not replying to this section)

Chapter 5 (other forms of cooperation) is considered by Member States to be

very useful 14

useless by 1

in between 6 (4 MS not replying to this section)

What is striking is the relatively low usefulness seen in measures to prevent terrorism under Chapter 4. Although alternative legal bases exist for Chapter 4 in 15 Member States, this can hardly explain the lower appreciation for this chapter, since the numbers for Chapter 3 (17 MS) and Chapter 5 (15 MS) are similar. As regards the actual use of these chapters, quite a mixed picture can be observed.

Use of provisions	Chapter 3 (major events)	Chapter 4 (terrorist offences)	Chapter 5 (other forms of cooperation)
Often	8	5	5
Sometimes	7	2	10
Never	6	15	8

In practice, the most frequent forms of operational police cooperation are joint patrols, common traffic controls and support at major events, followed by personal and document checks and support with special equipment. Other forms of cooperation are found in only a few cases.

Conclusions

From the data available, it can be concluded that a clear majority of Member States welcome these provisions even if in practice they use them only occasionally.

General difficulties regarding the application of these chapters are not known to the Commission. No case has been reported on the application of Articles 21 and 22 relating to civil or criminal liabilities. In any event, however, the response to the Prüm questionnaire on the need to review these chapters was unequivocal: 20 Member States saw no need for this, as opposed to 1 to 2 Member States in favour of revision.

6. RECOMMENDATIONS

First, Member States that are seriously delayed should make better use of existing possibilities. This applies to funding under Commission programmes as well as to support offered by the MCT and the helpdesk at Europol. It is hardly comprehensible that Member States encountering difficulties with resources or technical know-how can fail to make use of existing support facilities. Therefore, affected Member States are invited again to contact the MCT (while this project is running) or the helpdesk. Moreover, Member States in this situation should consider submitting applications for implementation projects under the ISEC funding programme before it expires after 2013. At the same time, operational Member States are invited to maintain and, where necessary, increase their readiness to support implementing Member States, e.g. by designating experts for evaluation visits.

As regards running the instrument and possible improvements short of legal amendments, again the work of the MCT and helpdesk should be taken into consideration. The mentioned focus groups are a good starting point to agree pragmatic solutions where ambiguities might exist in the legal provisions and where there is room for increasing efficiency in the current mechanism. Also, Member States that are not yet operational are advised to follow the results of the focus groups when implementing.

The provision of meaningful statistics remains essential as this is the best way to assess the added value of the Prüm Decisions. Therefore, Member States are invited to reconsider options to improve the current models for statistics where necessary. The aim should be to identify even more exactly the number of matches that, after a follow-up request, turned up information actually used in criminal investigations. Filtering statistics for DNA data exchange under Option 2 of document 12226/11¹⁵ would be a useful step in the right direction. This direction should be followed irrespective of what model of unfiltered statistics has been agreed by DAPIX.

Without prejudice to the obvious and urgent need to implement fully the existing instruments, and in line with the Commission's 2010 Communication 'Overview of information management in the area of freedom, security and justice'¹⁶, the Commission will fully apply the substantive and process-oriented principles set out in that Communication whenever the future implementation of other systems (such as SIS II) concerns a technology used for the Prüm Decisions or the objectives pursued by them. Consequently, given the current economic climate, particular emphasis should be put on the need to be as cost-effective as possible.

Though beyond the scope of the Decisions, the procedures for following up hits has turned out to be a key aspect. In this context, ongoing activities to map national follow-up procedures¹⁷ and related activities of the helpdesk for a standardised message format should also be considered. The Commission's Communication on a European Information Exchange Model (EIXM), published together with this report, presents further recommendations in this regard.

¹⁵ This option would allow the filtering out of matches ultimately not used for investigations due to technical reasons or national policing approaches.

¹⁶ COM(2010) 385.

¹⁷ Draft 2nd action list for the implementation of IMS (Information Management Strategy), doc. 12002/1/11 and doc 5113/12.

Overview of operational Member States

Explanation:

The tables reflect the current state of implementation for the different data types DNA, Fingerprints and VRD. In some cases, Member States do not yet exchange information in practice although they are considered ‘operational’, meaning that the Council has adopted a Decision allowing these Member States to exchange the data concerned.

Operational Member States are for

- DNA: BG, CZ, DE, EE, ES, FR, CY, LV, LT, LU, HU, NL, AT, PT, RO, SI, SK, FI
- FP: BG, CZ, DE, EE, ES, FR, CY, LT, LU, HU, NL, AT, SI, SK
- VRD: BE, DE, ES, FR, LT, LU, NL, AT, PL, RO, SE, SI, FI

Grey fields indicate that two Member States started exchanging the data type displayed in the table.

The tables are annexed to Council document 5086/7/12 and updated approximately every six weeks. The present tables are from REV 7, issued on 12 October 2012.

DNA operational data exchange																											
	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
BE	x																										
BG		x																									
CZ			x																								
DK				x																							
DE					x																						
EE						x																					
EL							x																				
ES								x																			
FR									x																		
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AT																			x								
PL																				x							
PT																					x						
RO																						x					
SI																							x				
SK																								x			
FI																									x		
SE																										x	
UK																											x

FP operational data exchange																											
	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
BE	x																										
BG		x																									
CZ			x																								
DK				x																							
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SK																								x			
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SE																										x	
UK																											x

VRD operational data exchange																											
	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
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