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## OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council  
On: 18 October 2016  
To: Working Party on Information Exchange and Data Protection (DAPIX)  
Subject: Summary of discussions

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### 1. Adoption of the agenda

The agenda was adopted as set out in CM 4103/16.

### 2. Information from the Presidency

The Presidency informed about DAPIX relevant issues having been dealt with in the framework of discussions on Eurodac, the Roadmap on Information Exchange and Information Management, and about the implementation of both the Data Protection Regulation and Directive.

### 3. Prüm Decision

#### 3.1 Implementation – state of play

Delegations were informed that subsequent to the adoption on 13 October 2016 of Council Conclusions on data protection regarding VRD/DK (13269/16) and DNA/GR (13270/16), the consultation of the European Parliament on the draft Council Implementing Decisions would follow.

Delegations took note of progress set out in 5017/6/16 REV 6. They were in particular reminded to check the information under point 5 of 12990/11 regarding the figures set out in the tables on maximum fingerprint search capacities (11540/16): the sum at the bottom of each column represents the number of incoming requests to be dealt with by a Member State on a daily basis. Delegations were furthermore reminded that no Prüm technical expert lists were issued anymore since contact details can be found in Part III of the manual for law enforcement information exchange.

The Commission informed that it had sent letters to five Member States which had failed to apply the Prüm Decision information exchange. When reiterating the offer to support the Prüm implementation, the Commission indicated that a workshop on Prüm would be organised in Brussels on 19 January 2017.

The Commission reminded delegations to notify by means of the MNE database the implementation of Council Framework Decision 2009/905/JHA on the accreditation of forensic service providers carrying out laboratory activities.

### **3.2 Organisation of evaluation visits**

Information in DS 1002/5/16 REV 5 was updated by GR and PT.

### **3.3 Draft Council Implementing Decisions**

The Council Legal Service informed delegations about the judgment of the Court of Justice on joined cases C-14/15 and C-116/15, which annulled Council Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU on the launch of automated vehicle registration data (VRD) exchange in Malta, Cyprus and Estonia respectively, and Council Decision 2014/911/EU on the launch of automated dactyloscopic data exchange in Latvia. The Court maintained, however, the effects of these Decisions until the entry into force of new acts intended to replace them.

The ruling implied that the Council may continue to act in accordance with Council Decision 2008/615/JHA (Prüm Decision), adopted on the basis of the EU Treaty before the entry into force of the Lisbon Treaty, until that Decision would be repealed, annulled or amended. Furthermore, the Court concluded that acts taken on the basis of Article 25(2) of Decision 2008/615/JHA are limited to the implementation of the framework established by the Prüm Decision, that is, in particular, allowing the application of automated data exchange. Since Article 34(2)(a) of the EU Treaty provides for voting by majority for the adoption of implementing measures, the Court considered unlawful the unanimity requirement of Article 25(2) of Decision 2008/615/JHA.

As a viable solution to remedy that procedural flaw, the annulled Decisions should be replaced by Decisions on the basis of Article 33 of Decision 2008/615/JHA, which according to the Court covers the adoption of implementing measures of the Prüm Decision. Furthermore, such measures can be adopted only after the European Parliament has been consulted. To date, the Parliament has not objected to the choice of Article 33 as the legal basis for the adoption of such measures applied since June 2015.

Finally, the CLS presented to delegations the new model for Council Conclusions following the Prüm evaluation of a Member State and Council Implementing Decisions on the launch of automated data exchange, the latter taking account of the Court's ruling in the new recitals (10) and (11).

In order to comply with the Court's judgment, delegations agreed to replace the annulled Decisions by the draft Council Implementing Decisions on respectively:

- the automated data exchange with regard to **Vehicle Registration Data** in *Malta, Cyprus, Estonia* (13000/16 JAI 809 DAPIX 160 CRIMORG 115 ENFOPOL 327 ENFOCUSTOM 147), and
- the automated data exchange with regard to **dactyloscopic data** in *Latvia* (13005/16 JAI 811 DAPIX 161 CRIMORG 116 ENFOPOL 328 ENFOCUSTOM 148).

The consultation of the European Parliament would be launched and these Implementing Decisions would be adopted upon receipt of the opinion of the EP.

### 3.4 Draft Council Implementing Decisions

In keeping with the recommendation of the CLS that for the sake of legal certainty all Prüm Council Decisions taken on the basis of 2008/615/JHA, Article 25(2) should be replaced, delegations agreed on the draft Council Implementing Decisions on respectively:

- the automated data exchange with regard to **DNA data**

*in Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium* and replacing Council Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU (13007/16 JAI 812 DAPIX 162 CRIMORG 117 ENFOPOL 329 ENFOCUSTOM 149);

- the automated data exchange with regard to **dactyloscopic data**

*in Slovakia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland* and replacing Council Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU (13013/16 JAI 813 DAPIX 163 CRIMORG 118 ENFOPOL 330 ENFOCUSTOM 150);

- the automated data exchange with regard to **Vehicle Registration Data (VRD)**

*in Finland, Slovenia, Romania, Poland, Sweden, Lithuania, Bulgaria, Slovakia and Hungary* and replacing Council Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU (13014/16 JAI 814 DAPIX 164 CRIMORG 119 ENFOPOL 331 ENFOCUSTOM 151),

The consultation of the European Parliament would be launched and these Implementing Decisions would be adopted upon receipt of the opinion of the EP.

#### **4. Manual on Law Enforcement Information Exchange**

The update 2016 was planned for the next DAPIX meeting.

#### **5. Renewed Information Management Strategy (IMS) –5th action list**

The state of play of the actions was set out by the action leading delegations along the lines of 13258/16:

- action 1: *A.T.H.E.N.A - SPOC training*: Action details would be defined at the kick off meeting in November / December 2016.
- action 2: *ADEP*: At the meeting in Dublin on 6 October 2016, a roadmap on different steps, in particular on quantifying the financial requirements for which Commission funding should be applied, was settled. The next meeting was planned in Madrid in next January.
- action 3: *PNRDEP*: Information on the second expert meeting in Sofia on 17-19 October 2016 was planned for the next DAPIX meeting.
- action 4: *Enhance Information Quality*: Delegations welcomed the action plan (13301/16) presented by eu-LISA. With regard to discussions on the issue at the incoming Commission High Level Expert Group (HLEG) meeting on next 7 November, delegations agreed to examine thoroughly the action plan at the forthcoming DAPIX meeting, particularly on the role of DAPIX in view of the different stakeholders in this action. Delegations were invited to submit comments on the action plan in due time before the DAPIX December meeting where the way forward should be agreed upon.
- action 5: *UMF 3*: Discussions on a UMF compliant firearms module were planned at the BKA in Wiesbaden on next 26/27 October.
- action 6: *Prüm DNA post-hit procedures*: The final report, contingent on Member States' remarks on the draft version soon to be submitted and setting out tangible proposals for best practices, was planned for the DAPIX December meeting

- action 7: *PCCC: European dimension*: Delegations took note of the information set out in 13258/16.
- action 8: *Strengthen SPOCs*: The MT delegate informed about being in contact with several interested delegations in order to set up an action plan
- action 9: *EUROPOL's involvement in the Prüm information exchange*: A preliminary analysis on Europol's potential role has been carried out. Details, that is the assessment of benefits as well as of cost, would have still to be defined before the DAPIX December meeting.

The Presidency concluded to update the content of 13258/16, initially intended to receive feed back on the current state of IMS actions and to facilitate reporting tasks to COSI and the Council (JHA) on next 18 November.

## **6. Implementation of the Roadmap on Information Exchange**

Information set out in 13283/16 as to the implementation of actions 1 to 16 of the Roadmap would be reviewed in the light of discussions above on the IMS action list.

## **7. Implementation of Directive (EU) 2016/681 on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime**

Member States widely supported the LT proposal (12990/16) to assign DAPIX a key role, aimed at reaching a structured approach in view of the manifold initiatives, such as the Informal Working Group on PNR or the above IMS PNRDEP project, to implement the PNR Directive. Given its expertise and main subject, namely the technicalities of police information exchange, DAPIX would be the right forum to serve as a focal point where all circulating information would be bundled. A large majority underlined that an overall horizontal coordination would avoid the risk of fragmentation of the ongoing activities. It would at the same time address the need for cooperation and harmonised implementation, which would avoid the development of incompatible solutions.

The Dutch delegation, which was supported by UK, LV and HU regarding the IWG-PNR approach, invited delegations to address the IWG-PNR in writing on any questions on the information note (13232/16). It also and promised a report meeting on progress made within the IWG-PNR at the forthcoming DAPIX meeting.

The Commission, underlining the national responsibility for structuring cross-border information transfer between Member States, gave a general overview of its support activities and of how it cooperates, in particular, with IWG-PNR. Finally, the Commission briefly informed about the comitology procedure dealing, in particular, with data transfer from air carriers to Member States.

The Presidency concluded that it should be further examined how DAPIX could support the implementation of the PNR Directive.

#### **8. Survey on information exchange on weapons**

The outcome of questionnaire CM 3817/16 (12513/16) was briefly presented. Delegations were invited to submit possible remarks by 15 November 2016 in order to enable a thorough discussion on the file at the forthcoming meeting. The Presidency promised to reflect on how to take forward the file to colleagues concerned with the discussions on the topic.

#### **9. AOB**

No issue was raised under this point.

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