



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 7 March 2014
(OR. en)**

7166/14

**JAI 129
DAPIX 34
CRIMORG 21
ENFOPOL 58
ENFOCUSTOM 29**

NOTE

From: Presidency

To: Working Group on Information Exchange and Data Protection (DAPIX)

No. prev. doc.: 13649/12 ADD 1, 11765/1/13

Subject: Prüm/VRD evaluation report of Malta
- Report of the evaluation visit (29 - 30 August 2013)

The present report is based on the replies to the two questionnaires relating to data protection (cf. doc. **13649/12 ADD 1 DAPIX 103 CRIMORG 98 ENFOPOL 270**) and to VRD data exchange (cf. doc. **11765/1/13 REV 1 DAPIX 94 CRIMORG 91 ENFOPOL 208**) forwarded by Malta, as well as on the information acquired by the evaluation team during its visit to Valetta.

Pursuant to Council Decisions 2008/615/JHA, Art. 25(2), and 2008/616/JHA, Art. 20(2), as well as Chapter 4 of the Annex thereto and the evaluation procedure set out in doc. **6661/1/09 REV 1 ADD 5 REV 2**, representatives from Belgium, the Netherlands and Eucaris conducted the evaluation visit to Valetta, Malta, on 29 and 30 August 2013.

On the basis of an invitation from the Ministry of the Interior of Malta, it was agreed that the evaluation would be carried out by representatives of the Belgian and the Dutch Police and Eucaris.

The venue of the evaluation visit were the office of Transport Malta as well as the Police Headquarters and the Communication and Information Systems Unit in Valetta.

The heads of units and their staff presented their current tasks and those they will handle in future once exchange of VRD information will be operational. In this context, data protection aspects, the organisational structure, technical functionalities and possible follow-up correspondence were explained.

Most questions were answered in depth and precisely during the evaluation visit although some issues needed input from the Maltese data protection authority which was not present during the visit. In addition to theoretical information, some of the cases were practically inquired using actual requests via Eucaris. The evaluation team put an emphasis on possible interpretation difficulties for police officers of other Member States to understand the replies provided by Malta.

1. Participants in the evaluation

The list of participants in the evaluation visit is set out in Annex I.

2. Questionnaires

Malta provided both the questionnaire on the exchange of VRD (cf. doc. 11765/13 DAPIX 94 CRIMORG 91 ENFOPOL 208) and on data protection (cf. doc. 13649/12 DAPIX 103 CRIMORG 98 ENFOPOL 270). Both questionnaires were discussed within the framework of the visit and further questions served to eliminate still existing information gaps.

During discussions, the evaluation team suggested that Malta update the reply to the questionnaire on data protection. The most important finding was the omission of Transport Malta itself as a competent authority for outgoing requests. The amended version was submitted by Malta on 18 November 2013 (cf. doc. 13649/12 ADD 1 DAPIX 103 CRIMORG 98 ENFOPOL 270).

Furthermore, the reply to the questionnaire on exchange of VRD presented during the evaluation visit proved to be incorrect in some aspects. Consequently, the evaluation team suggested to amend that document as well. The revised version was submitted by Malta on 18 November 2013 (cf. doc. 11765/1/13 REV 1 DAPIX 94 CRIMORG 91 ENFOPOL 208).

The Letter of Intent was signed by the Director General of Transport Malta and handed over to the lead expert during the evaluation visit.

3. Pilot Run / Test Run

The test run with Malta and Eucaris was successfully completed in time before the evaluation visit. The Prüm request and response messages generated by Malta were in accordance with the Prüm XML Message Specification. No errors or deviations from these specifications were found. It was observed that all elements that are available in the Prüm response message structure are filled by Malta according to the Prüm data overview.

However, three issues were identified and addressed by the evaluation team. They concerned the presentation of personal data and other data limitations due to national regulations.

4. Focal Points

In addition to the aforementioned discussions on the questionnaires, the following points were addressed by the evaluation team:

- National Law and organisation
- Data protection
- Technical architecture
- Logging, security and authorisation
- Live demonstration and test of the system

4.1 Organisation

There are two National Contact Points in Malta. Incoming as well as outgoing requests are processed by Transport Malta. In addition, the National Police processes outgoing requests. The legal ground for requests is checked by the staff of the International Relations Unit (IRU) and by Transport Malta in a few cases.

Only the designated officers within the IRU and within Malta Transport have direct access to the Prüm VRD application. The Customs Service can perform outgoing requests via Transport Malta. Malta police, Malta transport and Malta customs have an direct or indirect access to the VRD.

The Maltese legal system requires that once a case goes to court, others than the police have to attest the correctness of evidence. Therefore, Transport Malta has to be able to access Prüm, although it is not an organisation with policing duties.

The registration of VRD data is the responsibility of Transport Malta.

The outgoing requests are properly logged in the systems and the system automatically issues a reference number and logs the requesting authority.

The government ICT is the responsibility of the MITA (Malta Information Technology Agency). However, the Police have also systems and data centres of their own.

4.2 Data Protection

The provisions on data protection set out in the Council Decisions 2008/615/JHA and 2008/616/JHA are implemented in the Maltese national legislation. Much of it is covered by the law on data protection in force since 2011 (Subsidiary Legislation 440.05 and 440.06). The Office of the information and data protection Commissioner as an independent authority, reports directly to the President of Malta, controls all government levels and deals with private companies as well.

According to Decision 2008/615/JHA, Art. 30 (5) checks have to be retained for 18 months. This could not have been verified during the evaluation visit. After the evaluation visit, Maltese authorities confirmed the implementation of this provision.

Citizens are entitled to be informed on whether their data were processed over a certain period. The answer does not contain operational details.

It was noted that Article 31(1) of Decision 2008/615/JHA (claims for damages by civilians) was not implemented in Maltese legislation. Subsequent to the evaluation visit, this legal gap was to be closed by a new regulation pending, however, approval by the Maltese Parliament at the time of the final drafting of this report.

4.3 Data Quality

According to the evaluation team Malta did not fully implement the provisions required by Council Decision 2008/615/JHA and Council Decision 2008/616/JHA at the time of the evaluation visit. However, immediately after the evaluation visit had taken place, Malta took steps to rectify the identified issues. Some of the corrective measures were verified by tests carried out by EUCARIS, but some issues cannot be remotely ascertained. The table below sets out an overview of the findings, the mitigations by Malta and, where applicable, the verification by EUCARIS.

| Finding | Action by Malta | Test result Eucaris |
|--|------------------------|---|
| Printable address not provided | Corrected | Verified and OK by EUCARIS |
| Wrong owner information when not using reference date/time together with a vehicle registration number | Corrected | Verified and OK by EUCARIS |
| Various results on search by licence number | Corrected | Verified and OK by EUCARIS |
| Flagging | Corrected | The respective registration is not in place yet and flagging could not be verified by EUCARIS |
| Upgrade acceptance system | Corrected | Not possible to be verified by EUCARIS |
| Police: Multi country enquiry | Corrected | Verified and OK by EUCARIS |
| Police: No status information | Corrected | Verified and OK by EUCARIS |
| Police: No enquiry on date/time possible | Corrected | Verified and OK by EUCARIS |
| Police: No insurance information | Corrected | Verified and OK by EUCARIS |
| Police: Gender not displayed correctly | Corrected | Verified and OK by EUCARIS |

5. Other observations made and recommendations given to the Maltese authorities

At least two comments should be inserted in the data overview, namely (1) that since house numbers are not common in Malta they are not provided, and (2) that no insurance information will be provided in case of governmental and diplomatic owners.

Within the work processes of the police, there is still a need for paper forms and faxes containing Prüm data, resulting in a 'weak-link' compared to the very secure ICT process. A paper form is needed for prosecution and has to be signed by the officer who delivered the information. The process will be further elaborated in time.

At the time of the evaluation visit, only IRU officers have access to Prüm VRD data. It could be improved to give access to more officers and avoiding the process of printing etc. and reduce the burden on IRU/Sirene.

It is recommended that the police use generic police id and not disclose the name of the individual requesting officer in the log files.

6. Conclusion

The implementation of the Prüm VRD application and the related Prüm VRD information flow both - on a legislative level and a technical level - were considered incomplete at the time of the evaluation visit but corrected with regard to the technical findings afterwards, so that the evaluation team concludes that Malta has successfully implemented Council Decisions 2008/615/JHA and 2008/616/JHA with respect to the exchange of VRD on technical level.

However, the proposed legislation related to the data protection issue mentioned under 4.2 is still pending at the time of the final drafting of this report.

Therefore, the evaluation team proposes that the Working Party on Information Exchange and Data Protection (DAPIX) inform the Council that, once Malta has notified the General Secretariat of the Council of the completed legal implementation, Malta, for the purposes of automated searching of VRD, has satisfactorily implemented the provisions of the above-mentioned Council Decisions.

Participants of the Evaluation:

The evaluation team consisted of the following members:

| Member State | Participant | Function / Organization |
|---------------------|--------------------|--|
| Belgium | Pierre Lebrun | Lead expert VRD Commissaire Divisionnaire CGO/CGOD of Belgian Police |
| Netherlands | Idske Dijkstra | EUCARIS/ Netherlands VRD Evaluation Team expert |
| Netherlands | Peter Houweling | VRD expert Commissioner's Staff, ICT directorate Netherlands Police |

The team was informed by the following delegates in Malta:

| Participant | Organization / Function |
|--------------------|--------------------------------|
| Gilbert Agius | Transport Malta |
| Antoine Zahra | Transport Malta |
| Marita Xuereb | MITA |
| Ludwig Micallef | ALERT Agency |
| Mario Cuschieri | Police |
| Pierre Minuti | Police |