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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 18 March 2015
To: Working Party on Information Exchange and Data Protection (DAPIX)
(DNA/FP)
Subject: Summary of discussions

1. Adoption of the agenda

The agenda was adopted as set out in CM 1760/15 with the addition of, under point 7, the presentation of the updated DNA implementation guide, under point 10, a presentation from Europol on potential Prüm/EIS synergies, and under AOB, information points by DE and SK respectively.

2. Information from the Presidency

No issue was raised under this point.

3. Implementation of the "Prüm Decisions"

3.1 Case C-14/15 European Parliament v. Council

The Council Legal Service (CLS) informed that

- the case concerning the Council Decisions on the launch of VRD exchange with CY, EE and MT (C-14/15) was suspended until the European Court of Justice (ECJ) would pronounce judgments in cases with a similar background¹. These judgments were expected for 16 April. Seeking guidance from these judgments, the CLS would subsequently define to what extent the current draft Decisions on the launch of automated data exchange needed a recast;
- furthermore, the fact that the European Parliament challenged also Council Decision 2014/911/UE on the launch of fingerprint exchanges with LV (C-116/15) suggested that EP might systematically contest all future Council Decisions establishing Prüm connections on grounds of the same alleged procedural flaw in the current decision making;
- although the above mentioned Decisions were contested before the ECJ their effects were not suspended so that the exchange of information may continue;
- in case of annulment of the above-mentioned Decisions, the ECJ in practice maintains in force the effects of the annulled decisions during the time necessary for their replacement by another act adopted in due form and procedure. The CLS will submit to the ECJ a request to that effect in each case.

The CLS explained that if the ECJ declares Art. 25(2) of Decision 2008/615/JHA invalid, the Council would not be able to adopt any further decisions establishing new connections on the basis of the current "Prüm Decision". In order to unblock the situation, Decision 2008/615/JHA would need a formal amendment by a legislative act adopted through co-decision procedure. Such an amendment would require either a legislative proposal from the Commission or an initiative of 7 Member States in accordance with Art. 76 TFEU.

¹ Three cases concerning new psychoactive substances and start of VIS-Police system (C-317/13, C-540/13 and C-679/13); see doc 11878/13, 15826/13 and 5382/14

Such an "urgency" amendment could be limited to Article 25. In this case, the Article could be replaced by an empowerment of the Council or the Commission to adopt implementing decisions in accordance with Article 291 TFEU. In order to ensure the necessary degree of control of Member States, the Commission could be assisted by a Committee acting in accordance with the examination procedure, as specified in Article 5 of Regulation 182/2011 (the "Comitology Regulation"). The notifications of preparedness by all the Member States could be made a precondition for the adoption of such implementing decisions².

As soon as the amending act enters into force following its adoption, the annulled Council Decisions would need to be replaced and further Prüm connections could be established on the basis of the amending act.

3.2 State of play in the Member States

Delegations updated the factual information in 5010/2/15 REV 2 JAI 1 DAPIX 1 ENFOPOL 1 CRIMORG 1, in particular Annex 3 bis on DNA analysis files. UK informed under this point about the business case on the "Prüm Decisions" in which framework a DNA pilot project with NL has started, and cooperation with ES, DE and FR was going to take shape. Further discussing the state of play, delegations addressed i.a the topics of

- a) the Prüm governance: The Commission invited the Presidency to define the mid-and long-term requirements for a Prüm governance, in particular with regard to a central support facility. Delegations underlined that business continuity was needed and that more time should be dedicated to subgroup meetings in order to tackle not only implementation but also maintenance issues.

In this context, delegations highlighted the assistance offered outside official meetings by supporting Member States. While DE questioned the further need for a FP leading expert due to a lack of requests over the past four years, some delegations emphasized the pivot role of leading experts as a point of reference.

One delegation suggested to restart the regular update of contact lists details, which in some cases seemed to be outdated;

² See for example Article 48(3) of Regulation 767/2008 establishing the Visa Information System (VIS).

- b) the interconnectivity of operational MS: The DNA leading expert emphasized that increasing the degree of interconnectivity of operational MS needed a proactive approach on all sides and dedicated personnel in control of the IT processes. Several delegations advanced the lack of human resources, technical problems, or administrative issues because cross-border information exchange was deemed a subordinate task and establishing the Prüm network met with little interest at national political level. It was suggested to highlight these shortcomings at EU political level.

Finally, the Commission informed that the deadline regarding the notification of the former third pillar acquis in the field of police cooperation was postponed to 15 May 2015

3.3 Evaluation visits

The schedule for evaluation visits 2015 remained as set out in DS 1017/1/15 REV 1.

4. Prüm - statistics and reports on automated data exchange for 2014

Delegations took note of the complete statistics for 2014 (5503/2/15 REV 2 JAI 40 DAPIX 12 CRIMORG 11 ENFOPOL 20 + COR 1). Discussions focused on the amount of DNA matches compared to previous years and on the suggestion of the Commission to bilaterally solve inconsistent figures, which was rejected by Member States. On the common understanding, that statistics were an integral part of the Prüm policy, the debate was about either quantitative or qualitative DNA statistics to evaluate the Prüm instrument.

Concluding the discussion, the Presidency reminded the legal obligation to compile statistics on the results of automated data exchange with a view to evaluating its administrative, technical and financial application, and, moreover, emphasized the need for reliable statistics to strengthen the Council's inter-institutional position.

5. Accreditation of forensic service providers carrying out laboratory activities

– Member States ' compliance with Council Framework Decision 2009/905/JHA

The Presidency welcomed the positive state of play set out in DS 1172/15 as amended during the meeting and orally informed about several national initiatives to implement the Framework Decision.

6. Implementation of the "Prüm Decisions" regarding fingerprints

Although the DAPIX plenary meeting of 19 February made no comment on 5019/2/15 REV 2 JAI 2 DAPIX 2 CRIMORG 2 ENFOPOL 2, the Presidency invited Member States to check again the tables on maximum search capacities per day since some figures seemed to have been changed unilaterally.

7. Implementation of the "Prüm Decisions" regarding DNA data exchange

7.1 Delegations welcomed the **recommendation** (doc. 6876/15 DAPIX 33) to separately store foreign DNA profiles, which stem from international legal requests from before the entry into force of the Prüm Treaty, and DNA profiles for Prüm comparisons. Many MS indicated to already proceed that way.

7.2 The DE delegate informed about the recent update of the **DNA implementation guide** (doc. 7148/15 DAPIX 40 CRIMORG 25 ENFOPOL 61). Disagreement lingered on the recommendation to use wildcards only to replace rare allele values. The Presidency recommended to discuss outstanding issues at bilateral level.

8. CODIS

8.1 CODIS functionalities

The meeting supported the **recommendation** made in 6877/15 DAPIX 34, but reiterated the dissent on the use of wildcards.

8.2 DNA ONE for the EU - Improving EU Prüm DNA data exchange functionalities

The DE delegate outlined the ongoing project (6860/15 DAPIX 32) aimed at enhancing interoperability in view of the number of heterogeneous interfaces in use, and remedying CODIS imperfections.

8.3 Preparation of 11th CODIS User Conference on 28 April 2015

The meeting was informed about the incoming Conference where the EU could present wishes to the FBI with regard to CODIS functionalities.

9. DNA post hit data exchange

9.1 Developing the exchange of DNA data and the related post-hit information exchange under the Prüm Decisions

The FI delegate presented the ISEC funded project on technical DNA data exchange improvement, which was aimed at rationalising post-hit procedures, enhancing cooperation between project partners (EE, FI, NL, SE, Europol) and defining minimum requirements for data exchange.

Delegations were informed about the final conference on 6/7 May 2015 at Europol premises in The Hague, for which formal invitations will be sent out in due time.

9.2 Prüm (DNA) post-hit procedures across operational Member States

The UK delegation presented the results of the PIES (Prüm Implementation, Evaluation and Strengthening of Forensic DNA Data Exchange) comparative analysis of post hit procedures which was carried out in 15 Member States in 2013/2014. During the subsequent discussion on details of a possible manual for practitioners as the final product of the PIES project, it was preferred to publish the manual in an electronic format while the question remained open who should update it and where to host it. Moreover, the content of the manual should be kept to a minimum in order to avoid the risk of over-complexity and of unmanageable difficulties to maintain it. Finally, it should be structured in a way to avoid overlaps with the currently drafted manual on information exchange.

10. Europol Prüm helpdesk activities

Europol confirmed its readiness to maintain its Prüm helpdesk activities as already explained at the DAPIX plenary meeting on 19 February. Furthermore, in view of the considerable investigative added value of thousands of Prüm DNA and FP hits each year, the Europol delegate informed about an ongoing feasibility study to create synergies between Prüm data exchange and EIS.

11. Any other business

The DE delegate informed the meeting about two sort of technical problems in the DE DNA system which lead to disconnecting requests and match reports by either attributing them to another request from the same state, or to another state than the requesting one. It is not yet known whether more than the discovered cases exist. As soon as DE has solved the known problems with the MS concerned, all MS will be informed about the solution.

The SK delegate informed about the ISEC funded project on improving statistical methods for DNA and FP. The Presidency invited SK to report the results to the incoming DAPIX plenary on 27 April 2015
