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NOTE

From:	Presidency
To:	Delegations
Subject:	Draft Council Conclusions on the way forward in view of the creation of an European Forensic Science Area

Background

On 13 and 14 December 2011, the Council approved conclusions¹ on the vision for European Forensic Science 2020 including the creation of a European Forensic Science Area and the development of forensic science infrastructure in Europe. Their aim was to foster cooperation between police and judicial authorities across the European Union with a view to creating a European Forensic Science Area by 2020. Member States and the Commission were therefore called upon to work together to make progress on several areas, aiming to ensure a consistent and efficient administration of justice and the security of citizens.

¹ 17537/11 ENFOPOL 413 COPEN 342

The importance of forensics was highlighted once again in the Commission's Communication on the European Agenda on Security²: "(...) *forensic science is critical to law enforcement and prosecution. Law enforcement and judicial authorities must be confident that the forensic data they rely on is of high quality, including if the data comes from another Member State. It is therefore important to ensure that the forensic data exchanged through information exchange systems, such as the Prüm framework for fingerprints and DNA profiles, can be effectively used in court. A European Forensic Area, to align the processes of forensic service providers in Member States, would foster cooperation and ensure confidence.*"

The Netherlands announced that this topic would be a priority on the agenda of its Presidency, with Council Conclusions and an Action Plan aiming to move things forward in this area to be presented for adoption. In this regard, a stocktaking exercise involving a questionnaire³ sent to Member States and an analysis of the replies received⁴ took place in the LEWP during the Luxembourg Presidency and a comprehensive state of play of the current situation was drafted. This represented the main basis of the Action Plan incorporated in the annexed draft Council Conclusions.

During the informal Ministerial meeting that took place in Amsterdam on 25 and 26 January 2016, ministers agreed that creating a European Forensic Science Area continues to be an important goal to be reached by 2020.

² COM(2015) 185 final

³ CM 3080/15

⁴ 15051/15

Scope

The Action Plan follows the orientation given by the Council Conclusions in 2011 focusing on actions related to "traditional" forensics⁵ and the topics discussed during the Informal JHA Ministerial meeting of 26 January 2016. It can therefore also contain topics and actions that cover 'non traditional' forensics like digital forensics - a very wide area that is also relevant inter alia for the fight against cybercrime and terrorism. Such actions however, should be dealt with in cooperation with other working parties dealing with the overall policy on those topics. For any of these, the knowledge and expertise of relevant stakeholders in the area should be taken into consideration.

The scope of the present Action Plan does not include forensic accounting which is highly relevant for the area of financial investigation⁶.

Implementation and monitoring:

The implementation of the actions will take utmost account of the existing framework and instruments:

- Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities and its current state of play⁷;
- the structures for information and data exchange: Prüm Decision, SIENA, eu-LISA.

The European Network for Forensics Science Institutes (ENFSI)⁸ will play a prominent role in the implementation of several of the actions foreseen as it has the required expertise, capacity and impact.

⁵ Forensics should be understood as encompassing different fields of science, including anthropology, biology, chemistry, engineering, genetics, medicine, pathology, phonetics and toxicology. It includes activities like scientific collection and analysis of physical evidence in criminal cases, analysis of different types of materials, including blood, fibers, bullets and fingerprints etc.

⁶ The Dutch Presidency will present a separate Action Plan on financial investigation. For accountant forensics a hub of information and expertise is ALEFA - Association of Law Enforcement Forensic Accountants (<http://alefa.eu/>)

⁷ OJ L 322, 9.12.2009, p. 14

⁸ <http://www.enfsi.eu/>

For each of the actions, a detailed roadmap should be presented in the LEWP by the relevant coordinator(s); the Working Party should adopt the roadmap. Coordination with other stakeholders (such as DAPIX, Eurojust, Cepol, European Judicial Training Network (EJTN), etc.) should be sought as necessary. For an efficient monitoring, regular reporting in the LEWP on the implementation of each action should be requested.

The approach of the Action Plan is a qualitative one: its actions aim at fostering mutual trust between stakeholders in the field of forensics, by enhancing the quality of forensic products and services and the competence of forensic personnel. The proposed way forward does not refer to legally binding instruments but to a "softer" approach aiming mainly towards harmonisation through exchange of best practices and awareness raising. The outcomes of the implementation of the Action Plan may serve as the foundation for undertaking legislative initiatives, depending on the decision of the Commission and Member States.

Delegations are invited to discuss the annexed Presidency proposal for draft Council Conclusions on the way forward in view of the creation of an European Forensic Science Area and the action plan annexed thereto.

Draft Council Conclusions on the way forward in view of the creation of an European Forensic Science Area

THE COUNCIL OF THE EUROPEAN UNION,

HAVING REGARD to the value of the cross-border exchange of DNA-profiles, fingerprinting data and vehicle registration data under the Prüm Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime,

TAKING INTO ACCOUNT the Council Framework Decision 2009/905/JHA of 30 November 2009 on the accreditation of forensic service providers carrying out laboratory activities,

RECALLING THAT in December 2011 the Council approved conclusions regarding the realisation of a European Forensic Science Area by 2020, where routine forensic processes for the collection, processing, use and delivery of forensic data should be based on equivalent minimum forensic science standards and where forensic service providers should work on the basis of a common approach to implementation of these standards that fosters closer cooperation between them and the criminal justice systems,

TAKING INTO ACCOUNT that the Council Conclusions of 16 June 2015 on the Renewed European Union Internal Security Strategy and the European Agenda on Security consider forensic science critical to law enforcement and prosecution,

NOTING THAT forensic evidence is increasingly important in criminal matters and that law enforcement and judicial authorities must be confident that the forensic data they rely on is of high quality, including if the data comes from another Member State,

BEARING IN MIND the objective of the European Union of maintaining and developing the Union as an area of freedom, security and justice, whereby a high level of safety is to be provided by common action between the Member States in the field of police and judicial cooperation in criminal matters,

NOTING THAT a European Forensic Science Area would foster cooperation and ensure confidence through alignment of procedures of forensic service providers in Member States,

REAFFIRMING the need to ensure the effective and appropriate exchange of information regarding scientific evidence and the increased use of forensic data from one Member State in the judicial processes of another,

RECOGNISING the wish expressed by the Member States during the discussion at the Informal JHA Ministerial meeting of 26 January 2016 in Amsterdam to expand the exchange of information from forensic databases, in particular in the fields of weapons and ammunition, explosives and drugs,

RECOGNISING the important role of the European Network of Forensic Science Institutes (ENFSI) as a platform for efficient knowledge exchange, with a view to developing minimum quality requirements, facilitating international collaboration and identifying important systemic needs for the forensic community,

RECOGNISING THAT the European Police College, CEPOL, plays a role in enhancing knowledge of the national police systems and structures of other Member States, of Europol and of cross-border police cooperation within the European Union,

THE COUNCIL OF THE EUROPEAN UNION AND THE MEMBER STATES MEETING WITHIN THE COUNCIL,

CONSIDER it necessary to endorse the annexed action plan for the way forward with regard to the creation of a European Forensic Science Area and STRESS the importance of monitoring its implementation in the framework of the [Law Enforcement Working Party](#).

ACTION PLAN FOR THE WAY FORWARD FOR THE CREATION OF AN EUROPEAN FORENSIC AREA

1. ‘Best Practice Manuals for forensic disciplines’

Reference:	1
Objective:	Improving mutual trust by encouraging forensic harmonisation through the development and use of best practice manuals for forensic analysis.
Rationale:	<p>Use of best practice manuals covering a wide spectrum of forensic disciplines by forensic service providers in Europe will lead to more harmonisation of procedures and enhancement of the quality of forensic services available to law enforcement and justice across Europe. This will lead to increased trust between Member States and streamlined exchange of forensic evidence.</p> <p>This action is designed to stimulate the development of best practice manuals for all forensic disciplines, foster keeping best practice manuals up to date, improve sharing of best practice manuals and increase the use of best practice manuals by forensic service providers throughout Europe.</p> <p>Use of best practice manuals already developed by ENFSI (European Network of Forensic Science Institutes) within the project ‘Towards European Forensic Standardisation through Best Practice Manuals’, supported by the Prevention of and Fight against Crime Programme of the European Commission – Directorate General Home Affairs (code: PROJECT HOME/2012/ISED/MO/4000004278) will be stimulated.</p> <p>ENFSI is encouraged to share their best practice manuals with all European forensic service providers, including non-members. The Commission is encouraged to support ENFSI to keep already developed best practice manuals updated and develop best practice manuals for other forensic disciplines as needed.</p> <p>The national accreditation boards are encouraged to use ENFSI best practice manuals when carrying out accreditation of processes of forensic service providers. This will stimulate their use.</p>
Focus:	Development, updating, sharing and use of best practice manuals
Outcome:	Use of best practice manuals will lead to harmonisation of forensic procedures and increased trust between Member States exchanging forensic data.
Activities and responsible actors:	<p>Commission in cooperation with ENFSI is invited to start a stock taking exercise on the available best practice manuals, the updates needed and the gaps that still exist.</p> <p>Commission is invited to stimulate the development of BPMs.</p> <p>ENFSI is invited to implement the Council Conclusions of 2011 by:</p> <ul style="list-style-type: none"> • Sharing of existing Best Practice Manuals (BPMs) with non-ENFSI members (ENFSI), for example via publication on publicly available websites; • Developing new BPMs and updating existing BPMs (ENFSI); • Stimulating the use of BPMs by forensic service providers (Member States and ENFSI) • Translating BPMs in all EU languages to enhance their impact and stimulate use (Member States and ENFSI) • The national accreditation boards are encouraged to use ENFSI best practice manuals when carrying out accreditation of processes of forensic service providers. • <i>[activities can be added]</i>
Other policy areas/groups:	Coordination with national accreditation boards, the European co-operation for Accreditation (EA) and with the Commission should be sought.
Coordinator(s):	ENFSI
Planning:	Start before the end of 2016 <i>(specific planning still to be added per activity)</i>
Follow up and monitoring recs:	<i>[still to be defined]</i>

2. ‘Enhancing exchange of forensic evidence from databases, particularly in the areas of weapons and ammunition, explosives and drugs’

Reference:	2
Objective:	Enhancing exchange of forensic evidence from databases similar as under the Prüm Decision 2008/615/JHA , focussing on the areas of weapons and ammunition, explosives and drugs.
Rationale:	<p>During the informal JHA Council of 26 January 2016, the Member States stated their wish to expand the exchange of information from national forensic databases, in particular in the fields of weapons and ammunition, explosives and drugs.</p> <p>Enhanced exchange in these fields will contribute to combatting organised crime and terrorism.</p> <p>ENFSI is currently working on the project: ‘Towards the Development of Pan-European Databases in Forensic Science, supported by the European Commission – Directorate General Home Affairs (code: HOME/2014/ISPP/AG/ENFSI/4000007822). ENFSI, the Member States, Europol and the Commission need to work together to safeguard the continuation of the outcomes of this project, such as newly developed databases or newly linked national databases.</p> <p>In addition, the outcomes of the EFFECT project (Examinations of Firearms and Forensics in Europe and aCross Territories) should be taken into account. Coordination with other similar projects, for example RESPONSE (Collect, Analyse, Organize, Evaluate, Share – A Response to Challenges in Forensic Drugs Analyses) should be sought.</p>
Focus:	Expanding the exchange of forensic data from national databases
Outcome:	Increased exchange of forensic data between Member States which will aid in combatting cross-border crime
Activities and responsible actors:	<ul style="list-style-type: none"> • Member States are invited to review the legal possibilities for expanding the exchange of information in different areas (deadline 2017) • Member States are urged to make full use of potential to exchange forensic data. • Europol is invited to map possibilities to exchange forensic information (2016) • Evaluate (preliminary) outcomes of different projects such as ‘Towards the Development of Pan-European Databases in Forensic Science’, EFFECT and RESPONSE and use as input to develop appropriate strategy to enhance exchange of forensic evidence (ENFSI, MS, Europol, COM) • Foster interoperability of already existing databases/examination systems <p><i>[activities can be added]</i></p>
Other policy areas/groups:	Coordination with Europol and with the Commission should be sought.
Coordinator(s):	ENFSI
Planning:	Improved exchange of forensic information in one or more of the above mentioned area’s by 2020.
Follow up and monitoring recs:	<i>[still to be defined]</i>

3. 'Proficiency tests and collaborative exercises for forensic disciplines'

Reference:	3
Objective:	Improving mutual trust by increased use of proficiency tests and collaborative exercises by forensic service providers.
Rationale:	<p>Proficiency tests and collaborative exercises are important for testing procedures as well as maintaining competence of forensic practitioners. Participation in these tests is a measure of the quality of the examinations performed and provides transparency and feedback on performance. Enhanced use of proficiency tests will therefore lead to improved quality of forensic providers and will enhance trust between Member States exchanging forensic data.</p> <p>Not in all forensic disciplines proficiency tests are available. Development of these tests should be encouraged and supported. In addition, use of these tests by as many forensic service providers as possible should be encouraged and supported.</p>
Focus:	Enhancing development and use of proficiency tests and collaborative exercises by forensic service providers.
Outcome:	Enhanced use of proficiency tests and collaborative exercises by forensic service providers will lead to increased trust between Member States.
Activities and responsible actors:	<ul style="list-style-type: none"> • Identify the areas of expertise in which no proficiency tests are available or in which proficiency tests of improved quality are needed (ENFSI); • Evaluate the proficiency tests available via private providers and make a list of recommended tests that can be chosen from by forensic service providers (ENFSI); • Optimizing existing proficiency tests (ENFSI); • Determine the priority proficiency tests to be developed (Member States and ENFSI); • Develop additional proficiency tests with support of Commission (commercial providers, ENFSI, COM); • ENFSI will run an adequate number proficiency tests per year amongst the Member States; • Member States are committed to stimulate their forensic service providers to engage in the proficiency tests run by ENFSI or recommended by ENFSI; • The Commission is invited to subsidise above activities.
Other policy areas/groups:	Coordination with ENFSI, Member States, private providers of proficiency tests and the Commission should be sought.
Coordinator(s):	ENFSI
Planning:	Start before the end of 2016
Follow up and monitoring recs:	<i>[still to be defined]</i>

4. 'Forensic awareness for law enforcement and justice communities'

Reference:	4
Objective:	Improving forensic awareness among law enforcement and justice communities
Rationale:	<p>Improving forensic awareness among law enforcement and justice communities will foster better understanding and confidence in forensic service providers. By making the law enforcement and justice communities more knowledgeable of the (general) possibilities and limitations of forensic science, as well as of the current developments, they will be able to understand and critically scrutinise forensic evidence.</p> <p>This action is intended to stimulate the development and use of forensic awareness courses for police, prosecutors and judges. These courses should be intended to raise general forensic awareness, but also need to be tailored for specific forensic disciplines, for example digital forensics or forensic DNA analysis. Learning can take place via traditionally given courses, as well as e-learning, apps, webinars etc.</p> <p>Coordination with existing initiatives should be sought - e.g. the Hercule III Programme, aimed at fighting fraud, corruption and other irregularities, includes possibilities for training in the field of digital forensics.</p>
Focus:	Developing and implementing forensic awareness courses for law enforcement and justice communities.
Outcome:	The level of forensic awareness among prosecutors, police and judges will be raised, which will ensure that forensic evidence is fully understood when used in court.
Activities and responsible actors:	<ul style="list-style-type: none">• Provide EU funding for the development of forensic training programmes for the justice and law enforcement community (COM).• Development and implementation of training programmes (CEPOL and Member States in cooperation with Commission);• CEPOL to organise (3) training seminars on forensic collection of evidence in 2017• Europol to create a webpage on their website to facilitate the exchange of forensic information/make it possible for EPE - European Platform for Experts to be used
Other policy areas/groups:	Coordination with CEPOL, European Judicial Training Network (EJTN), Eurojust, Europol, ENFSI, forensic institutes and the Commission should be sought.
Coordinator(s):	CEPOL, EJTN (tbc)
Planning:	2017 and 2018
Follow up and monitoring recs:	<i>[still to be defined]</i>

5. ‘Accreditation of forensic science institutes and laboratories and competence of forensic personnel’

Reference:	5
Objective:	Stimulate accreditation of forensic procedures by forensic science institutes and laboratories.
Rationale:	<p>Accreditation of forensic procedures performed by forensic science institutes and laboratories makes exchange of forensic evidence easier as it will enhance trust in the quality of forensic procedures and consequently in the forensic results obtained in different Member States. In their replies to the questionnaire on the European Forensic Science Area, as contained in the overview document (15051/15), a large majority of respondents stated that accreditation of forensic science institutes and laboratories, is very important. Whereas several respondents think accreditation could be stimulated by making it mandatory under national law or an EU directive (or equivalent), other respondents think accreditation should be reached voluntarily. The most important hurdle mentioned is budget, but other hurdles were mentioned as well.</p> <p>An action plan should be developed by the Commission to stimulate accreditation of forensic procedures, focusing on those areas which produce data that can be potentially exchanged at international level, such as weapons and ammunition, explosives and drugs, which were highlighted as priorities by the informal JHA ministerial meeting of 26 January 2016. This will be aimed at neutralising hurdles and supporting forensic science institutes that seek accreditation of their procedures.</p> <p>Respect for minimum competence criteria for forensic science personnel, is viewed as very important by a large majority of respondents to the questionnaire. Again, the most important hurdle mentioned is budget. An action plan should be developed by the Commission on how to make progress in competence assurance for forensic personnel. Cooperation with ENFSI can be sought in this respect.</p>
Focus:	Stimulate accreditation of forensic procedures by forensic science institutes and laboratories.
Outcome:	An action plan to stimulate accreditation of forensic procedures, focused on the areas of weapons and ammunition, explosives and drugs. In addition, an action plan to stimulate competence assurance for forensic personnel.
Activities and responsible actors:	The Commission is invited to develop above mentioned action plans.
Other policy areas/groups:	Coordination with Member States, ENFSI, forensic service providers, national accreditation boards and the Commission should be sought.
Coordinator(s):	Commission
Planning:	<i>[still to be defined]</i>
Follow up and monitoring recs:	<i>[still to be defined]</i>

6. 'Stimulating exchange of forensic data via Prüm and improving its quality'

Reference:	6
Objective:	Improving the quality of forensic data, such as DNA-profiles and fingerprints, exchanged between all Member States under the Prüm Decision 2008/615/JHA and stimulating full exchange.
Rationale:	The exchange of DNA profiles and fingerprints in the EU by linking databases under the Prüm Decision 2008/615/JHA of 23 June 2008 has been very successful although the system is not fully implemented between all Member States. However there is still room for improvement in terms of quality of exchanged data. In addition, not all Member States are taking part in exchanging these forensic data yet or do not exchange with all other (operational) Member States. Full exchange of forensic data between all Member States will contribute to combatting cross-border crime.
Focus:	Fostering better quality of forensic data exchanged between all Member States under the Prüm Decision and stimulating full exchange.
Outcome:	Improved quality of DNA-profiles and fingerprints exchanged between Member States and quantitative increase in exchange, which will contribute to better combatting cross-border crime.
Activities and responsible actors:	The criteria for DNA profiles that can be exchanged via Prüm need to be analysed in order to assess if they need to be more stringent (DAPIX). <i>[activities can be added]</i>
Other policy areas/ groups:	Coordination with Member States, the Working Party on Information Exchange and Data Protection (DAPIX) and the Commission should be sought.
Coordinator(s):	<i>[still to be defined]</i>
Planning:	<i>[still to be defined]</i>
Follow up and monitoring recs:	<i>[still to be defined]</i>