

**TREATY BETWEEN THE KINGDOM OF BELGIUM, THE FEDERAL REPUBLIC OF GERMANY, THE KINGDOM OF SPAIN, THE REPUBLIC OF FRANCE, THE GRAND DUCHY OF LUXEMBOURG, THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF AUSTRIA**

concerning the deepening of cross-border cooperation, in particular in the fields of the fight against terrorism, cross-border criminal activities and illegal migration

The High Contracting Parties to the present Treaty, Member States of the European Union,

Considering that in a space in which people circulate freely it is important for the Member States of the European Union to intensify their cooperation to fight against terrorism, cross-border criminal activities and illegal migration with greater effectiveness,

Wishing to take up a pioneering role in the attainment of the maximum possible level of cooperation, for the sake of the development of European cooperation and without prejudice to the Treaty on the European Union and the Treaty establishing the European Community, specifically by means of a better exchange of information, particularly in the area of the fight against terrorism, cross-border criminal activities and illegal migration, and to offer the possibility to participate in this cooperation to all the other Member States of the European Union,

Wishing to incorporate the regime that the present Treaty establishes within the legal framework of the European Union, to obtain an improvement in the Union as a whole of the exchange of information, especially with regards to the fight against terrorism, cross-border criminal activities and illegal migration, creating the necessary legal and technical means to achieve this purpose,

Acting with respect for fundamental rights, as recognized by the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the common constitutional traditions of the participating States, and conscious in particular that the transmission of personal data to another Contracting Party requires that the receiving Contracting Party must guarantee an adequate level of data protection,

Considering that, without prejudice to the internal legal provisions that are in force, there is a need to maintain and envisage adequate judicial controls over the measures provided for in this Treaty,

Intending to complete this Treaty with other agreements to make it possible to automatically consult data in other relevant databases, insofar as this is necessary and proportionate to further develop cross-border cooperation,

Have agreed upon the following provisions:

**Chapter 1**  
**General provisions**

Article 1  
Foundations of the Agreement

(1) By means of the present Treaty, the Contracting Parties seek to reinforce cross-border cooperation, in particular as regards the exchange of information between them.

(2) This cooperation shall not affect European Union law and, in accordance with the present Treaty, shall be open to the adhesion of any Member State of the European Union.

(3) Cooperation within the framework of this Treaty is aimed at developing initiatives to strengthen EU cooperation in the fields that are mentioned in the treaty itself.

(4) Three years at the latest after the entry into force of this Treaty, an initiative to transfer its provisions into the framework of the European Union will be initiated, on the basis of an evaluation of the experience of the implementation of this Treaty, following prior agreement with the European Commission or on the basis of a proposal of the European Commission, and in accordance with the Treaty on the European Union and the Treaty establishing the European Community.

(5) The Contracting Parties will jointly inform the Council of the European Union and the European Commission periodically about the advances in this cooperation.

## **Chapter 2**

### **DNA profiles, fingerprint data and other data**

#### **Article 2**

##### **Creation of national DNA analysis databases**

(1) The Contracting Parties make a commitment to create and to maintain national DNA analysis databases for the purpose of prosecuting criminal offences. The treatment of data stored in these databases by virtue of this Treaty will be carried out in accordance with national law that is in force for each kind of treatment, without prejudice to other provisions of this Treaty.

(2) With regards to the application of the present Treaty, the Contracting Parties will guarantee that reference indexes are available concerning the data contained in the national DNA analysis databases, in accordance with the first phrase of point 1. These reference indexes will exclusively contain DNA\* profiles obtained from the non-codifying part of the DNA sample, and a reference. The reference indexes will not be allowed to contain data that allows the person concerned to be directly identified. Reference indexes that cannot be attributed to any individual person (open records) will have to be recognisable as such.

(3) In the moment when it submits its legal instrument for ratification, acceptance, adoption or adhesion, each Contracting Party will designate the national DNA analysis databases to which articles 2 to 6 apply, and the conditions for them to be automatically consulted in accordance with section 1 of article 3.

\* For the Federal Republic of Germany, DNA profiles as they are understood in this Treaty, are referred to as "DNA-Identifizierungsmuster" (DNA identification models).

#### **Article 3**

##### **Automated consultation of DNA profiles**

(1) The Contracting Parties will allow the national contact points of the other Contracting Parties that are referred to by article 6 to have access, for the purpose of the prosecution of criminal offences, to the reference indexes of its DNA analysis databases, that will include the right to consult them in an automated way by means of the comparison of DNA profiles. The consultation will have to be carried out solely in relation to concrete cases, and in accordance with the legislation of the Contracting Party that carries out the consultation.

(2) If, in the course of an automated check, the existence of a matching profile is ascertained between a DNA profile that has been transmitted and a DNA profile stored in the database of the receiving Contracting Party, the requested national contact point will receive information about the existence of a coinciding profile and its reference in an automated manner. If no matching profile is found, this fact will be communicated in an automated manner.

#### **Article 4**

##### **Automated comparison of DNA profiles**

(1) The Contracting Parties will carry out, in mutual agreement and through their national contact points, a comparison of the DNA profiles of its open records with all the DNA profiles

contained in the reference indexes of the other national DNA analysis databases, for the purpose of the prosecution of criminal offences. The transmission and comparison will be carried out in an automated form. The transmission for the purpose of comparing the DNA profiles of the open records will take place solely in cases in which this transmission is envisaged in the national law of the requesting Contracting Party.

(2) If, in the course of a comparison carried out in accordance with point 1, one Contracting Party ascertains the existence of any DNA profiles that have been transmitted which match those contained in its DNA analysis databases, it will communicate the reference indexes in relation to which this match has been found, without delay, to the national contact point of the other Contracting Party.

#### Article 5

##### Transmission of other personal data and further information

In cases where the existence of matching DNA profiles is ascertained by means of the procedures envisaged in articles 3 and 4, the transmission of other available personal data relating to the reference indexes and further information will be carried out in accordance with the national law of the requested Contracting Party, including provisions on the subject of judicial assistance.

#### Article 6

##### National contact point and execution agreement

(1) For the execution of data transmission in accordance with articles 3 and 4, each Contracting Party will designate a national contact point. The competencies of the national contact points will be governed by the national legislation that is in force for each of them.

(2) The technical details of the procedures described in articles 3 and 4 will be regulated in an execution agreement in accordance with article 44.

#### Article 7

##### Acquisition of genetic molecular material and transmission of DNA profiles

If, in the course of an investigation or criminal justice proceedings there is no available DNA profile of a specific person who is in the territory of a requested Contracting Party, the latter will have to provide judicial assistance by means of the acquisition and analysis of the mentioned person's genetic molecular material and the transmission of the resulting DNA profile, provided that:

1. the requesting Contracting Party communicates the purpose for which it is required;
2. the requesting Contracting Party submits an order or statement of investigation from the competent authority that is responsible in accordance with its national law, from which it may be deduced that the requirements for the acquisition and analysis of genetic molecular material would be complied with, if this specific person were to be in the territory of the requesting Contracting Party, and
3. compliance with the requirements for the acquisition and analysis of genetic molecular material and for the transmission of the DNA profile obtained in accordance with the national law of the requested Contracting Party.

#### Article 8

##### Fingerprint data

With regards to the application of this Treaty, the Contracting Parties will guarantee the availability of reference indexes relating to the data contained in automated national fingerprint identification systems created for the purposes of the prevention and prosecution of criminal offences. The reference indexes will exclusively contain fingerprint data and a reference. The reference indexes must not contain data allowing the person concerned to be

directly identified. The reference indexes that cannot be attributed to anyone (open records) must be identifiable as such.

#### Article 9

##### Automated consultation of fingerprint data

(1) The Contracting Parties will allow the national contact point of each of the other Contracting Parties referred to in article 11, to have access, for the purpose of the prevention and prosecution of criminal offences, to the reference indexes of its automated fingerprint identification systems created for these purposes, including the right to consult them in an automated manner through the comparison of fingerprint data. The check must only be carried out in relation to concrete cases, and in accordance with the national law of the Contracting Party that runs it.

(2) The definitive connection of an item of fingerprint data with a reference index of the Contracting Party that maintains the database will be carried out by the national contact point that runs the check on the basis of the reference indexes that are communicated in an automated manner which are necessary for the definitive attribution of the fingerprint data.

#### Article 10

##### Transmission of other personal data and further information

In cases where the existence of matching fingerprint data is ascertained by means of the procedures envisaged in article 9, the transmission of other available personal data relating to the reference indexes and further information will be carried out in accordance with the national law of the requested Contracting Party, including provisions on the subject of judicial assistance.

#### Article 11

##### National contact point and implementing agreement

(1) For the implementation of the data transmission envisaged in article 9, each Contracting Party will designate a national contact point. The competencies of the national contact points will be governed by the national legislation that is applicable for each of them.

(2) The technical details of the procedure envisaged in article 9 will be regulated in an implementing agreement in accordance with article 44.

#### Article 12

##### Automated consultation of data from vehicle licensing registers

(1) The Contracting Parties will allow the national contact points of other Contracting Parties mentioned in section 2, for the purposes of the prevention and pursuit of crimes, and the prosecution of offences for which the courts or prosecution services of the Contracting Party that carries out the check are competent, and for the prevention of threats to security and public order, to have access to the following information contained in national vehicle registers, with the right to consult it in an automated manner in concrete cases:

1. data on the owners or users and
2. data on the vehicles.

It will only be possible to run the check using a complete vehicle identification number or a full number plate. The check will have to be carried out in accordance with the national law of the Contracting Party which runs it.

(2) For the implementation of the data transmission referred to in point 1, each Contracting Party will designate a national contact point to receive requests. The competencies of each contact point will be governed by the applicable national law. The technical details of the

procedure will be regulated in an implementing agreement in accordance with article 44.

#### Article 13

##### Transmission of non-personal data

For the purposes of the prevention of criminal acts and the prevention of threats to security and public order in relation to large events with cross-border significance, particularly in the fields of sports or of meetings of the European Council, the Contracting Parties will mutually exchange, both following a previous request or on their own initiative in accordance with the national law of the Contracting Party that transmits the information, information of a non-personal kind that may prove necessary for these purposes.

#### Article 14

##### Transmission of personal data

(1) For the purposes of the prevention of criminal acts and the prevention of threats to security and public order in relation to large events with a cross-border significance, particularly in the fields of sports or of meetings of the European Council, the Contracting Parties will mutually exchange, both following a previous request or on their own initiative, data concerning persons, when the existence of final judgments or of other circumstances justify the assumption that these persons will commit a criminal act as a result of this event, or if they represent a threat to security and public order, insofar as the transmission of such data is admissible in accordance with the national law of the Contracting Party that transmits the information.

(2) The processing of personal data will only be allowed for the purposes established in point 1 and for the specific event for which it was transmitted. The data that has been transmitted will be immediately deleted when the purposes mentioned in point 1 have been achieved, or when it is no longer possible to achieve them. In any case, the data will have to be deleted after a maximum period of a year has passed.

#### Article 15

##### National contact point

For the execution of the transmission of data envisaged in articles 13 and 14, each Contracting Party will designate a national contact point. The competencies of each national contact point will be governed by applicable national law.

### **Chapter 3**

#### **Measures for the prevention of terrorist attacks**

#### Article 16

##### Transmission of information for the prevention of terrorist attacks

(1) With the goal of preventing terrorist attacks, the Contracting Parties will be able to transmit the personal data and information mentioned in point 2 to the national contact points of the other Contracting Parties envisaged in point 3, in accordance with national law, in concrete cases, without the need for a previous request, insofar as this is necessary because specific events justify the assumption that the persons to which they relate will commit criminal acts envisaged in the provisions in articles 1 to 3 of the Framework Decision no. 2002/475/JHA of the Council of the European Union, dated 13 June 2002, to combat terrorism.

(2) The data and information that will be transmitted will include the name, surnames, date and birthplace, as well as the description of the facts that motivate the assumption mentioned in point 1.

(3) Each Contracting Party will designate a national contact point for the exchange of data with the national contact points of the other Contracting Parties. The competencies of each national contact point will be governed by the applicable national law.

(4) The transmitting authority may, in accordance with its national law, set conditions with regards to the use of the data and information by the receiving authority. The receiving authority will be subject to these conditions.

#### Article 17

##### Security escorts on flights

(1) Each Contracting Party will independently make a decision, in accordance with its national air security policy, concerning the use of security escorts on the flight of aircraft licensed in said Contracting Party. The use of such security escorts will be in accordance with the International Convention of Chicago dated 7 December 1944, relating to international civil aviation, and its annexes, particularly Annex no. 17, as well as to other documents for its application, and bearing in mind the powers of the captain on board in accordance with the Tokyo Convention dated 14 September 1963 concerning criminal acts and other acts committed on board an aircraft, and in accordance with other relevant instruments of international law, insofar as they are binding for the Contracting Parties.

(2) The security escorts on flights to which this Treaty refers will be police officers or other public employees with equivalent training who are responsible for guaranteeing security on board the aircraft

(3) The Contracting Parties will lend each other mutual support in the training and perfecting of the security escorts on flights, and they will cooperate closely with regards to their equipment.

(4) Before using a security escort on a flight, the competent national coordination point, in accordance with article 19, of the Contracting Party that deploys the escort must notify the use of this escort in writing. The notification will take place at least three days before the flight concerned, from or towards an airport of another Contracting Party, and will be sent to the competent national coordination point of the other Contracting Party. In case of imminent danger, a further notification will take place immediately prior to the landing.

(5) The written notification, which will be dealt with as confidential by the Contracting Parties, will contain the data mentioned in Annex 1 of this Treaty. The Contracting Parties will be able to modify Annex 1 by means of separate agreement.

#### Article 18

##### Service weapons, ammunition and equipment

(1) The Contracting Parties will grant the security escorts on flights deployed by other Contracting Parties, on request from these Contracting Parties, a general authorisation to carry service weapons, ammunition and other equipment on flights that depart from or whose destination are airports of the Contracting Parties. This authorisation will include the power to carry service weapons and ammunition on board the aircraft, as well as, subject to point 2, in the security areas with restricted access within an airport of the Contracting Party concerned.

(2) The power to carry service weapons and ammunition will be subject to the following conditions:

1. Disembarking from an aircraft in an airport with service weapons and ammunition, or the stay in security areas with restricted access in an airport of another Contracting Party, will only be allowed with the accompaniment of a representative of the competent national authority of the Contracting Party concerned.

2. Immediately after disembarking from the aircraft, the service weapons and ammunition that were taken on board will be handed over under escort at a hand-over point designated by the competent national authority, where they will be kept under custody.

Article 19  
National points of contact and coordination

In order to carry out the functions indicated in articles 17 and 18, each of the Contracting Parties will designate a national point of contact and coordination.

Chapter 4  
Measures to combat illegal migration

Article 20  
Advisors on documents

(1) The Contracting Parties will make a decision, based on a joint evaluation of the situation and taking into account Council Regulation (EC) n° 377/2004 of 19 February 2004, about the creation of a network of immigration liaison officers, on the deployment of advisors on documents to States that have been described as countries of origin or transit of illegal migration.

(2) In accordance with their national law, the Contracting Parties will periodically inform each other about new information in the field of illegal migration that they may have acquired through the activity of their advisors on documents.

(3) When advisors on documents are deployed, the Contracting Parties will be able to designate one from among themselves to take charge of coordination in relation to concrete measures. This coordination may be for a limited time period.

Article 21  
Functions of the advisors on documents

Advisors on documents sent by the Contracting Parties will carry out, in particular, the following functions:

1. advising and training for the consular authorities of the Contracting Parties on questions related to passports and visas, particularly in the recognition of forged and manipulated documents, as well as other questions related to the fraudulent use of documents and illegal migration;
2. advising and training for transport companies in relation to the duties for which they are responsible in accordance with the Convention of 19 June 1990 on the implementation of the Schengen Agreement of 14 June 1985, concerning the progressive suppression of controls at common border points, and Annex 9 of the Convention of Chicago of 7 December 1944 concerning international civil aviation, as well as recognition of forged or manipulated documents and acquaintance with the provisions that are in force on the subject of entry, and
3. advising and training for the authorities and institutions of the host country that are competent in the subject of police controls in border areas.

This will not affect the competencies of the delegations abroad, nor those of the authorities of the Contracting Parties responsible for carrying out policing functions in border areas

Article 22  
National points of contact and coordination

The Contracting Parties will designate national points of contact and coordination to act as interlocutors in order to agree on matters relating to the sending of advisors on documents, and about the planning, execution, supervision and review of advisory and training measures.

## Article 23

### Support in cases of repatriation

(1) The Contracting Parties will support each other with regards to repatriations, taking into account Council Decision 2004/573/CE of 29 April 2004, concerning the organization of joint expulsion flights from the territory of two or more Member States, of third-country nationals who have been the object of expulsion orders, as well as Council Directive 2003/110/CE of 25 November 2003, on assistance in cases of transit for the purpose of repatriation by air. They will be informed sufficiently in advance about planned repatriations, and they will offer the other Contracting Parties, insofar as this is possible, about their involvement in these repatriations. In the joint repatriation operations, the Contracting Parties will reach an agreement concerning the escort to be provided for the persons who are to be returned and the security measures.

(2) A Contracting Party will be able to proceed, insofar as this is necessary, to the repatriation of a person through the territory of another Contracting Party. The Contracting Party through whose territory the repatriation will take place will make a decision about it. In its decision concerning the repatriation, it will establish the provisions for the execution of the repatriation and it will also apply, when necessary, admissible means of coercion, in accordance with its national law, against the person who is set to be repatriated.

(3) With regards to the planning and execution of repatriations, the Contracting Parties will designate national contact points. Periodic meetings of experts will be held in the framework of a working party to:

1. evaluate the results of previous operations and to take them into account when planning and executing subsequent ones;
2. examine the possible problems that the transit mentioned in point 2 may give rise to, and to look for solutions to these problems.

## **Chapter 5**

### **Other forms of cooperation**

## Article 24

### Forms of joint intervention

(1) With the purpose of intensifying police cooperation, the competent authorities designated by the Contracting Parties, in order to prevent threats to security and public order, and to prevent criminal acts, will be able to organize joint patrols and others forms of joint intervention in which officials or other public employees (hereafter referred to as agents) designated by the Contracting Parties may participate in interventions carried out in the territory of another Contracting Party.

(2) Each Contracting Party, in its role as host State and in accordance with its national law, will be able to entrust agents of other Contracting Parties, with the agreement of their State of origin, to take on sovereign powers within the framework of joint actions or, when this is allowed by the law in the host State, it will be able to grant agents from other Contracting Parties the power to take on its own sovereign powers in accordance with the law in their State of origin. In any case, it will only be possible for the sovereign powers to be exercised under the direction and, as a rule, in the presence of agents of the host State. For this purpose, the agents of the other Contracting Party will be subject to the national law of the host State. The host State will be responsible for their actions.

(3) The agents of other Contracting Parties who participate in joint interventions will follow the instructions given by the competent authority of the host State.

(4) The practical aspects of this cooperation will be regulated in implementing agreements in accordance with article 44.

## Article 25

### Measures to be taken in case of imminent danger

(1) In cases of urgent necessity, the agents of a Contracting Party will be able, without prior authorisation from the other Contracting Party, to cross the common border to adopt, in the area that is close to the border within the territory of the other Contracting Party, and in accordance with the national law in the host State, the provisional measures that are necessary to avoid an imminent danger for the life or physical integrity of persons.

(2) An urgent necessity will exist, in the sense referred to in point 1, when the danger could materialize if one waits for the intervention of the agents of the host State, or for the establishment of the subordinate relationship provided for in point 2 of article 24.

(3) The agents who carry out this intervention will immediately have to inform the host State. This State will confirm the receipt of information and will immediately adopt the necessary measures to avoid the danger in question, and to take charge of the situation. The agents who carry out the intervention will only be able to remain in the territory of the State until it has adopted the necessary measures to prevent this danger. The mentioned agents will follow the instructions issued by the host State.

(4) The Contracting Parties will reach a separate agreement about which authorities will have to be informed immediately in accordance with point 3. The agents who carry out the intervention will be subject to the provisions of this article and to the law of the Contracting Party in whose territory they intervene.

(5) The host State will be responsible for the measures adopted by the agents who carry out the intervention.

## Article 26

### Assistance in the case of large events, catastrophes and serious accidents

The competent authorities of the Contracting Parties will mutually support each other, in accordance to their national law, in mass events and other similar occasions, catastrophes or serious incidents, in the following way:

1. they will mutually inform each other as soon as possible of any events or occasions that have cross-border significance and of any relevant data;
2. in situations that have cross-border repercussion, they will adopt and coordinate the necessary policing measures on their territory;
3. on request from the Contracting Party in whose territory the relevant situation occurs, they will lend assistance, insofar as is possible, through the sending of agents, specialists and advisors, as well as the provision of equipment.

International conventions subscribed by the Contracting Parties concerning mutual assistance in the case of catastrophes or serious accidents will not be affected.

## Article 27

### Cooperation following prior request

(1) The competent authorities of the Contracting Parties will lend each other mutual assistance in the framework of their respective competencies and in accordance with their national law.

(2) The competent authorities of the Contracting Parties will lend each other mutual assistance in accordance with the first sentence of point 1 of article 39 of the Convention of 19 June 1990 on the implementation of the Schengen Agreement of 14 June 1985 on the progressive suppression of controls in common borders areas, in particular by means of:

1. verifying the identity of the owner and user and of investigations regarding the drivers of land, water and air vehicles, insofar as this does not already fall under article 12;
2. information on drivers' licenses, navigation permits and similar qualifications;
3. the verification of the residence and location of the home address;
4. the checking of residence documents;
5. the verification of the holders of telephone connections and connections of other forms of telecommunication, insofar as access to them is public;
6. the verification of identity;
7. investigation into the origin of objects, for example, arms, motor vehicles and aquatic vehicles (checks about the means of acquisition);
8. useful information in police databases and police documents, as well as information proceeding from compilations of information to which access is public;
9. urgent warnings concerning weapons or explosives and warnings concerning the falsification of currency or stamped values;
10. information on the practical execution of cross-border observation measures, cross-border pursuits and controlled deliveries; and
11. notification of the willingness of a person to make a statement

(3) In cases where the requested authority is not competent to fulfil the request, it will send the request to the competent authority. The requested authority will inform the requesting authority about this transmission, and about which authority is competent to fulfil the request. The competent authority will process the request and will inform the requesting authority of its result.

## **Chapter 6**

### **General provisions**

#### Article 28

##### The use of service weapons, ammunition and equipment

(1) The agents of one Contracting Party who are in the territory of another Contracting Party within the framework of a joint intervention will be able to use their national service uniform there. They will be able to carry service weapons, ammunitions and equipment allowed by the national law of its State of origin. Every Contracting Party will be able to forbid agents sent by another State to carry specific service weapons, ammunition and equipment.

(2) The use of the service weapons, ammunition and equipment listed in Annex 2 will only be allowed in cases of legitimate defence, including the provision of necessary aid. In concrete cases, the responsible agent from the host State will be able to authorize, in accordance with his/her national law, a use of service weapons, ammunition and equipment that exceeds the cases provided for in the first sentence. The use of service weapons, ammunition and equipment will be subject to the legislation of the host State. The competent authorities will mutually inform each other with regards to the service weapons, ammunition and equipment that are authorised in each circumstance, and of the conditions for their use.

(3) The Contracting Parties will be able to modify Annex 2 by means of a separate agreement.

(4) In cases in which the agents of a Contracting Party use motor vehicles in the territory of another Contracting Party within the framework of measures provided for this Treaty, they will be subject to the respect of the same provisions on the issue of traffic as the agents of the host State, including norms concerning prerogatives in the subject of circulation and the use of signalling devices that produce sound or light.

(5) The practical aspects of the use of service weapons, ammunition and equipment will be regulated in the framework of an execution agreement in accordance with article 44.

(6) This will not affect the provisions of article 18.

#### Article 29 Protection and support

Contracting Parties will have to lend the agents sent by other Contracting Parties the same protection and support in the fulfilment of their functions that is lent to their own agents.

#### Article 30 General regime of responsibility

By analogy, article 43 of the Convention of 19 June 1990 on the implementation of the Schengen Agreement of 14 June 1985, relating to the gradual suppression of controls in common border areas, will be applicable to the responsibility arising from this Treaty. The provisions in the first sentence will not apply to articles 17 and 18.

#### Article 31 Legal status of the agents in the field of criminal law

Agents who intervene in the territory of another Contracting Party by virtue of this Treaty will be equivalent to the agents of this other Contracting Party with regards to the criminal acts that they may commit or which they may suffer, insofar as no further provisions are made in another convention that is applicable to the Contracting Parties.

#### Article 32 Service report

Agents who intervene in the territory of another Contracting Party by virtue of this Treaty will continue to be subject to service regulations that are in force in their own State, particularly with regards to the legal disciplinary regime.

#### Chapter 7 General provisions on data protection

#### Article 33 Definitions and scope of application

(1) For the purposes of this Treaty:

1. "treatment of personal data" will be understood as all treatment or processing methods relating to personal data, with or without the aid of automated procedures, such as compilation, storage, ordering, conservation, adaptation or modification, reading, checking, use, the communication by means of transmission, diffusion or any other forms of making it available, the combination or association, as well as the blocking, deletion or destruction of data; a communication relating to the existence or the absence of a match will also be considered processing of personal data for the purposes of this Treaty;

2. "automated check" will be understood as the direct access to an automated database held by a different body, in such a way that it is possible to obtain a reply to an information request in a totally automatic manner;

3. "flagged" will be understood as the insertion of a mark in the personal data that has been stored, without this seeking to limit its treatment in the future;

4. "block" will be understood as a marking in the personal data that has been stored with the scope of limiting its treatment in the future.

(2) The following provisions will apply to data that will be transmitted or has been transmitted by virtue of this Treaty, unless something different is established in the previous chapters.

#### Article 34

##### Data protection level

(1) With regards to the treatment of personal data that has been or will be transmitted by virtue of this Treaty, each Contracting Party will guarantee that its national law will offer a level of data protection that is at least equivalent to that resulting from the Council of Europe Convention of 28 January 1981 for the protection of individuals with regards to the automated treatment of personal data, and the Additional Protocol of 8 November 2001, and will comply with Recommendation no. R(87) 15 of the Committee of Ministers of the Council of Europe to Member States, dated 17 September 1987, in relation to the use by police forces of personal data, including when the data is subject to treatment that is not automated.

(2) It will only be possible to initiate the transmission of personal data by virtue of this Treaty when, in the territory of the Contracting Parties that participate in this transmission, the provisions contained in this chapter have been incorporated into national law. The Committee of Ministers envisaged in article 43 will establish, through a decision, whether this requirement has been met.

#### Article 35

##### Relationship to the purposes

(1) The receiving Contracting Party will only be able to use the personal data for the purposes for which it was transmitted in accordance with this Treaty; the treatment of this data for other purposes will require prior authorisation from the Contracting Party that is the holder of the database and will be carried out subject to the national law of the receiving Contracting Party. It will be possible to grant the authorisation when, under the national law of the Contracting Party which is the holder of the database, this kind of treatment is allowed for these other purposes.

(2) The treatment of data transmitted in accordance with articles 3, 4 and 9 by the Contracting Party that makes the information request or carries out the comparison will exclusively be allowed in relation to:

1. verification of whether a match exists or whether there is no match between DNA profiles or compared fingerprint data;
2. the preparation and presentation of a request for administrative or judicial assistance in accordance with national law, provided that the data matches;
3. registration in accordance with article 39.

The Contracting Party that is the holder of the database will only be able to treat the data that has been transmitted to it by virtue of articles 3, 4 and 9 insofar as this is necessary to carry out the comparison, the automated answer to the check or the registration in accordance with article 39. Once the comparison of data is over, or the automated information request has been answered, the data that has been transmitted will be immediately deleted, unless it needs to be processed further for the purposes established in points 2 and 3 of the first sentence.

(3) The Contracting Party that is the holder of the of the database will only be able to use the data transmitted by virtue of article 12 when this is necessary to provide an automated reply

to a request or to carry out a search in accordance with article 39. Once the automated request has been answered, this data will be immediately deleted, unless further treatment is required for the registration envisaged in article 39. The requesting Contracting Party will only be able to use the data it receives in reply to its request in the proceedings that gave rise to the request.

#### Article 36 Competent authorities

Personal data that has been transmitted can only be treated by the authorities and courts that are competent to carry out a function in the framework of the purposes envisaged in article 35. In particular, the further communication of the transmitted data to other bodies will require a prior authorisation from the transmitting Contracting Party, and will be subject to the national law of the receiving Contracting party.

#### Article 37 Accuracy, updating and duration of data storage

(1) The Contracting Parties will have to supervise the accuracy and updating of personal data. If it is verified, through ordinary procedure or by means of a communication by the concerned person, that incorrect data or data that was not allowed to be transferred has been transmitted, this fact will be immediately communicated to the receiving Contracting Party or Parties. These Parties will have to correct or delete the data. The personal data that has been transmitted will also have to be corrected when it is discovered to be incorrect. When the receiving authority has reason to believe that the transmitted data is inexact or must be deleted, it will immediately inform the authority that has transmitted the data of this fact.

(2) The data whose accuracy is challenged by the concerned person, but whose accuracy or inaccuracy cannot be determined, will be marked, if this is what the concerned person demands, in accordance with the national law of the Contracting Parties. When this is done, the mentioned mark can only be removed, in accordance with national law, with the consent of the concerned person, or on the basis of a resolution by a competent court or of the independent body that is competent in the field of the supervision of data protection.

(3) The transmitted personal data will be deleted when it should not have been transmitted or received. Data that has been legally transmitted and received will have to be deleted:

1. when it is not necessary or has ceased to be necessary for the purpose for which it was transmitted; if the personal data was transmitted without a previous request, the receiving body will have to immediately check whether it is necessary for the purpose which has motivated its transmission;

2. once the maximum time limit for the storage of data envisaged in the national law of the transmitting Contracting Party has passed, provided that at the time of the transmission the transmitting authority has informed the receiving body of this maximum time limit.

Rather than suppression, there will a blocking of the data, in accordance with national law, when there are reasons to believe that the suppression could affect interests of the concerned person that are worthy of protection. It will only be possible to transmit or use the blocked data for the purpose which resulted in its suppression not being carried out.

#### Article 38 Technical and organizational provisions to guarantee the protection of data and its security

(1) The transmitting and receiving authorities will have to provide an effective protection to personal data in relation to its accidental or unauthorized destruction, its accidental loss, unauthorised access to it, its accidental or unauthorized alteration and its unauthorised divulgation.

(2) The technical details of the automated consultation procedure will be regulated in an implementing agreement in accordance with article 44, which will guarantee:

1. that measures will be adopted with regards to technical conditions at any given time, in order to guarantee the protection and security of the data, guaranteeing, in particular, its confidentiality and integrity;
2. when networks of general access are used, coding and authentication procedures accredited by competent bodies must be applied; and
3. that the admissibility of the information requests can be checked in accordance with points 2, 4 and 5 of article 39.

#### Article 39

Documentation and registration, special provisions concerning automated and non-automated transmission

(1) Each Contracting Party will guarantee that any non-automated transmission and non-automated reception of personal data will be documented by the authority that makes the request and the authority that is the holder of the database, in order to check the admissibility of the transmission. The documentation will include the following details:

1. the reason for the transmission;
2. the transmitted data;
3. the date of the transmission, and
4. the designation or identification of the body that makes the request and of the one that holds the database.

(2) The automated data checks by virtue of articles 3, 9 and 12 and the automated comparison by virtue of article 4 will be subject to the following provisions:

1. Only agents of the national contact points who have been especially authorized to do this will be allowed to run the automated check or comparison. Subject to prior request, the supervisory authorities mentioned in point 5 and the other Contracting Parties will be given access to the list of agents who are authorised to run automated checks or comparisons.

2. Each Contracting Party will guarantee that any transmission and any receipt of data will be recorded by the authority that is the holder of the database and by the authority that makes the information request, including communications of the existence or absence of matches. This register will include the following details:

- a) the transmitted data;
- b) the date and exact hour of the transmission; and
- c) the designation or identification of the authority that makes the consultation and of the one that holds the database.

The authority that makes the request will likewise record the reason for the request or transmission and the identification of the agent who ran the check, as well as the identification of the agent who initiated the request or transmission.

(3) The authority that makes the record will communicate, under previous request, the data contained in the register to the competent body in the field of data protection of the concerned Contracting Parties immediately and, in any case, within the four weeks following the receipt of the request. It will only be possible to use the data in the register for the following purposes:

1. to control the protection of the data;
2. to guarantee the security of the data.

(4) The data in the register will have to be protected against undue use and other kinds of misuse by means of adequate procedures, and will be stored for two years. Once the storage period has expired, the data in the register will be immediately deleted.

(5) The legal control over the transmission or reception of personal data will be the responsibility of the competent independent authority on the matter of the control of data protection of each of the Contracting Parties. In accordance with national law, any person will be able to submit a request to this authority for it to examine the legality of the treatment of data concerning him/her. The mentioned authorities, like the bodies that are competent for the registration, will also have to, apart from these requests, undertake checks by means of the use of samples on the legality of transmissions based on the records relating to these requests. The results of this supervisory activity will be preserved for 18 months for the purposes of their supervision by the competent independent bodies in the field of the control of data protection. They will have to be deleted immediately after this time limit has passed. The competent independent authority in the field of the control of data protection of one Contracting Party will be able to request that the competent body in the field of the control of data protection of any other Contracting Party exercise its functions in accordance with national law. The competent independent authorities in the field of the control of data protection of the Contracting Parties will maintain the necessary level of mutual cooperation in order to carry out their supervisory functions, in particular through the exchange of relevant information.

#### Article 40

##### Rights of the people concerned to information and the payment of damages

(1) On request from the concerned person, and once s/he has demonstrated his/her identity, the competent body, in accordance with national law, will have to provide information to him/her, subject to national law, without disproportionate costs, in a generally comprehensible manner and without undue delays, about the data concerning this person that has been the object of treatment, as well as its source, recipient or kind of recipient, the intended purpose of the treatment and its legal basis. Likewise, the person concerned will have the right for any incorrect data to be corrected and for any data that has been illegally treated to be deleted. The Contracting Parties will also guarantee to the person concerned, in case their right to data protection has been contravened, to be able to file an effective complaint before an independent and impartial court, established by law, in application of point 1 of article 6 of the European Convention of Human Rights, as well as before an independent supervisory authority in application of article 28 of Directive 95/46/CE, and to enjoy the possibility that the courts may recognise his/her right to receive payment for damages or other kinds of compensation. The details of the procedure to ensure these rights are upheld and the reasons for the limiting of the right to information will be governed by the national law of the State in which these rights are claimed.

(2) When a body of a Contracting Party transmits personal data by virtue of this Treaty, the receiving authority of the other Contracting Party will not be able, with regards to its responsibility in accordance with national law, to claim in its defence before someone who has been harmed that the transmitted data was incorrect. If the receiving authority pays damages arising from the use of incorrect transmitted data, the transmitting body will have to refund the receiving authority the total amount paid out for damage compensation.

#### Article 41

##### Information on request from the Contracting Parties

The receiving Contracting Party will inform the transmitting Contracting Party, following a prior request, about the treatment of the transmitted data and the results obtained through this treatment.

## **Chapter 8**

### **Implementation provisions and final provisions**

#### Article 42 Declarations

(1) At the time of depositing the instrument for its ratification, acceptance, approval or adhesion, each Contracting Party will designate, in a declaration addressed to the depositary State, the competent authorities for the implementation of this Treaty.

They will have to designate:

1. in accordance with point 1 of article 6, the national contact points for DNA analysis;
2. in accordance with point 1 of article 11, the national contact points for fingerprint data;
3. in accordance with point 2 of article 12, the national contact points for vehicle registration data;
4. in accordance with article 15, the national contact points for the exchange of information relating to large events;
5. in accordance with point 3 of article 16, the national contact points for information concerning the prevention of terrorist attacks;
6. in accordance with article 19, the national points of contact and coordination for security escorts on flights;
7. in accordance with article 22, the national points of contact and coordination for advisors on documents;
8. in accordance with point 3 of article 23, the national contact points for the planning and execution of repatriations;
9. in accordance with articles 24 to 27, the competent authorities and agents.

(2) It will be possible to modify the declarations made by virtue of point 1 at any time by means of a declaration addressed to the depositary. This modification will have its desired effect on the date when it is received by the depositary.

#### Article 43 Committee of Ministers

(1) The Contracting Parties will create a Committee composed by the ministers of the Contracting Parties. This Committee of Ministers will adopt the necessary decisions in relation to the execution and implementation of this Treaty. The decisions of the Committee of Ministers will be adopted unanimously among all the Contracting Parties.

(2) To support the Committee of Ministers, a joint working party formed by representatives of the Contracting Parties will take charge of the supervision of the implementation and interpretation of this Treaty, and of determining whether there is a need to complete or develop it further. The joint working party will meet at the behest of a Contracting Party.

#### Article 44

##### Implementing agreements

The competent authorities of the Contracting Parties will be able to reach agreements, on the basis of this Treaty and within its framework, that have the administrative implementation

of this Treaty as their purpose.

#### Article 45

##### Scope of territorial application

The provisions of this Treaty will be applicable in the territory of the Contracting Parties. With regards to the Kingdom of the Netherlands, this Treaty will only be applicable to the part of the Kingdom that is located in Europe. With regards to the French Republic, this Treaty will only be applicable to the part of the Republic which is located in Europe.

#### Article 46

##### Expenses

Each Contracting Party will be responsible for the expenses incurred by their authorities in the implementation of this Treaty. In special cases, the interested Contracting Parties will be able to adopt a different system.

#### Article 47

##### Relation with other bilateral or multilateral agreements

(1) The provisions of this Treaty will only be applicable insofar as they are compatible with European Union law. If the European Union were to adopt rules that may affect the scope of application of this Treaty in the future, the corresponding provisions of this Treaty will cease to be implemented in benefit of the law of the European Union. The Contracting Parties will be able to modify or to replace the provisions of this Treaty in the light of the new relevant provisions of European Union law.

(2) This Treaty will not affect the rights and duties contained in other bilateral or multilateral agreements that already exist; the Contracting Parties will preserve the ability to apply existing bilateral or multilateral agreements between the Contracting Parties in their mutual relations. In case there is an incompatibility with the rights or duties arising from these other agreements, the provisions of this Treaty will prevail.

#### Article 48

##### Ratification, acceptance, approval

This Treaty will be subject to ratification, acceptance and approval. The instruments of ratification, acceptance or approval shall be deposited with the depositary. At the time of depositing the instruments of ratification, acceptance or approval, it will be possible to issue a declaration concerning its territorial scope for implementation.

#### Article 49

##### Depositary

(1) The depositary of this Treaty is the Government of the Federal Republic of Germany.

(2) The depositary will notify any ratification, acceptance, adhesion, reservation or complaint to the other Contracting Parties without delay, as well as any further declarations related to this Treaty.

(3) The depositary will be responsible for registering the Treaty in the General Secretariat of the United Nations in accordance with article 102 of the Charter of the United Nations.

#### Article 50

##### Entry into force

(1) This Treaty will come into force between the Contracting Parties that have ratified it 90 days after the deposit of the second ratification, acceptance or approval instrument. For the other Contracting Parties, the Treaty will come into force 90 days after the deposit of its

ratification, acceptance or approval instruments.

(2) The depositary will notify all the Contracting Parties of the date when it comes into force.

#### Article 51 Adhesion

(1) This Treaty will be open to adhesion for all the States that are members of the European Union. Following adhesion, the execution agreements and any other agreements in relation to this Treaty that are reached on the basis of article 44, will also become binding for the adhering States.

(2) The adhesion instruments shall be deposited with the depositary. In the case of an adhesion, it will be possible to issue a declaration concerning the territorial scope of application at the time of the deposit of the adhesion instrument, although this cannot occur prior to the entry into force of the treaty in accordance with article 50.

(3) For each State that adheres to it, this Treaty will come into force 90 days after the deposit of its adhesion instrument.

#### Article 52 Denunciation

(1) This Treaty has been agreed for an indefinite period.

(2) Any Contracting Party will be able to denounce this Treaty by means of a notification addressed to the depositary by diplomatic conduit. The denunciation will have an effect six months after the receipt of the notification by the depositary.

Made in Prüm on 27 May 2005 with a single original version in German, Spanish, French and Dutch, all of which are equally authentic versions. The original will be deposited in the archives of the depositary, which will send a certified copy of it to all the signatory States and adhering States that adhere to it.

By the Kingdom of Belgium

By the Federal Republic of Germany

By the Kingdom of Spain

By the French Republic

By the Grand Duchy of Luxembourg

By the Kingdom of the Netherlands

By the Republic of Austria

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