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NOTE

from :	German delegation
to :	Police Cooperation Working Party
Subject :	Policy document concerning access to Eurodac by Member States' police and law enforcement authorities

1. Introduction

The German delegation is preparing a proposal for a Council decision concerning access to Eurodac by Member States' police and law enforcement authorities for the purposes of preventing, detecting or investigating criminal offences, in particular terrorist offences.

Under the Hague Programme (No. 2.1.), with the aim of strengthening security, an improvement of the exchange of information is to be achieved, including by means of more extensive access to existing EU information systems.

In its Communication to the Council of 24 November 2005 (doc. 15122/05 CATS 82 ASIM 61 COMIX 805), the Commission identifies the absence of access by internal security authorities to Eurodac data as a shortcoming in relation to the objective of combating terrorism and crime.

As the Commission underlines, the biometric information contained in Eurodac may be the only information available to identify a person suspected to have committed a crime or an act of terrorism. Thus, the information in the Eurodac database can be important in preventing and combating terrorism and other offences and should therefore be available for consultation by Member States' police and law enforcement authorities.

Without prejudice to detailed negotiations on the drafting of the proposal, the German delegation would like to submit to the delegations a number of issues for a preliminary discussion.

2. Main issues

2.1. The proposal provides that Member States' police and law enforcement authorities may search the Eurodac database for the purposes of preventing, detecting or investigating criminal offences, in particular terrorist offences. The searching shall be permissible only where there are reasonable grounds, based on factual indications, for believing that the data subject has committed or will commit a criminal offence and where, in view of the seriousness of the specific offence, retrieval of data is appropriate.

2.2. In accordance with Article 4 of Council Regulation (EC) No. 2725/2000 (Eurodac), the fingerprint data transmitted by a Member State would be compared by the Central Unit with the fingerprint data stored in the central database. The Central Unit would forthwith transmit the hit or the negative result of the comparison to the Member State. Where there is a hit, the Central Unit would transmit for all data sets corresponding to the hit, the data recorded in the central database.

2.3. It is considered that, for technical reasons, each Member State should designate a national authority that acts as contact point for the data transmission between the Member States' police and law enforcement authorities and the Eurodac Central Unit. The national contact point would act only as a technical transition point and would not affect the search system provided by Council Regulation (EC) No. 2725/2000 (Eurodac).

2.4. With regard to the transmission of additional data in cases where the search in Eurodac establishes a match between the fingerprint data transmitted and the fingerprint data stored in Eurodac, the proposal provides a system of administrative cooperation similar to chapter VI of Regulation (EC) No. 343/2003.

I.E. the Member State of Origin would, at the request of the consulting Member State, transmit additional personal data relating to the data subject to whom the fingerprints have been identified as belonging (for example the personal details of the subject, such as name, nationality, date and place of birth as well as particulars from the identity card or passport, such as number, period of validity, issuing authority and places of residence and routes travelled etc.).

2.5. Regarding data protection, the proposal provides a purpose limitation and also refers to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal data and the Additional Protocol of 8 November 2001 to that Convention as well as the Recommendation No. R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector. In this respect the provisions set out in the Eurodac Regulation (Regulation (EC) No. 2725/2000) as well as in the Prüm Convention could serve as an example.

2.6. In parallel to negotiating this Decision, it is being examined whether the Eurodac Regulation (Regulation (EC) No. 2725/2000) should be amended to introduce a bridging clause. The advice of the Legal Service is sought on this subject.

2.7. Currently, all Member States participate in Eurodac, as well as the Kingdom of Norway, Iceland and Switzerland. It is considered that any country participating in Eurodac should be given the opportunity to have access to the Eurodac database for the purposes set out in the proposed Decision.

The advice of the Legal Service is sought as to the legal form such cooperation with third countries should take as well as the possibilities for involving these States in the debates.

3. Procedure

The delegations are invited to examine the above points with a view to an in-depth debate at the PCWP meeting on 12 January 2007.

Based on the results of the discussion on 12 January 2007, the German delegation plans to prepare a draft Decision to be presented at a later stage.