



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 October 2007

13728/07

**CRIMORG 145
ENFOPOL 164**

NOTE

From : Presidency
To : Article 36 Committee

No. prev. doc. : 11045/1/7 REV 1 CRIMORG 113 ENFOPOL 126

Subject : Draft Council Decision on the implementation of Decision 2007/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

Following the discussions at the Article 36 Committee meeting of 7 September 2007 and written comments submitted by delegations, the Presidency hereby presents a re-draft for the “Prüm implementation Decision”.

Note regarding Article 8(3): the information that dactyloscopic data belong to an identified or a non identified person is also transmitted, not by a specific code included in the reference number (as is the case for DNA), but by the fact that a specifically dedicated data field is filled in or not.

DRAFT

COUNCIL DECISION 2007/.../JHA

of...

on the implementation of Decision 2007/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

THE COUNCIL OF THE EUROPEAN UNION

Having regard to Article 34 of Council Decision 2007/.../JHA,

Having regard to the initiative of the Federal Republic of Germany,

Having regard to the Opinion of the European Parliament,

WHEREAS:

- (1) On ... 2007 the Council adopted Decision 2007/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.
- (2) By means of Decision 2007/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, the basic elements of the Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration (hereinafter "the Prüm Treaty"), were transposed into the legal framework of the European Union.

- (3) Article 34 of Decision 2007/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, provides that the Council is to adopt the measures necessary to implement Decision 2007/.../JHA at the level of the Union in accordance with the procedure laid down in the second sentence of Article 34 (2) (c) of the EU Treaty. These measures are to be based on the Implementing Agreement of 5 December 2006 concerning the administrative and technical implementation and application of the Prüm Treaty.
- (4) This Decision establishes those common normative provisions which are indispensable for administrative and technical implementation of the forms of cooperation set out in Council Decision 2007/.../JHA. The Annex contains implementing provisions of technical nature. Furthermore, a separate Manual, containing exclusively factual information to be provided by the Member States, will be drawn up and kept up to date by the General Secretariat of the Council.

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL

Article 1

Aim

The aim of this Decision is to lay down the necessary administrative and technical provisions for the implementation of Council Decision 2007/.../JHA of..., especially for the automated exchange of DNA data, dactyloscopic data and vehicle registration data as set out in its Chapter 2 as well as for other forms of cooperation as set out in its Chapter 5.

Article 2

Definitions

For the purposes of this Decision:

1. "search" and "comparison" as referred to in Articles 3, 4 and 9 of Decision 2007/.../JHA mean the procedures by which it is established whether there is a match between, respectively, DNA data or dactyloscopic data which have been communicated by one Member State with DNA data or dactyloscopic data stored in the databases of one, several, or all of the Member States;
2. "automated searching" as referred to in Article 12 of Decision 2007/.../JHA means an online access procedure in order to consult the databases of one, several, or all of the Member States;
- 2a. (*moved to 4a*)
3. "DNA profile" means a letter or a number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, i.e. the particular molecular structure at the various DNA locations (loci);
4. "non-coding part of DNA" means chromosome regions not genetically expressed, i.e. not known to provide for any functional properties of an organism;
- 4a. "DNA reference data" means a DNA profile and a reference number;
5. "reference DNA profile" means the DNA profile of an identified person;

6. "unidentified DNA profile" means the DNA profile obtained from traces collected during the investigation of criminal offences and belonging to a person not yet identified;
7. "note" means a Member State's marking on a DNA profile in its national database of the fact that there has already been a match on such DNA profile on another Member State's search or comparison;
8. "dactyloscopic data" means fingerprint images, images of fingerprint latents, palm prints, palm print latents as well as templates of such images (coded minutiae), as far as they are stored and dealt with in an automated database;
9. "vehicle registration data" means the data-set as specified in Chapter 3 of the Annex to this Decision;
10. "individual case", as referred to in Article 3(1), second sentence, Article 9(1), second sentence and Article 12(1) of Council Decision 2007/.../JHA, means one single investigation or prosecution file. If such a file contains more than one DNA profile, or one piece of dactyloscopic data or vehicle registration data, they may be transmitted together as one request.

CHAPTER 2

COMMON PROVISIONS FOR DATA EXCHANGE

Article 3

Technical specifications

Member States shall observe the common technical specifications in connection with all requests and answers related to searches and comparisons of DNA profiles, dactyloscopic data and vehicle registration data. These technical specifications are laid down in the Annex to this Decision.

Article 4

Communications network

The electronic exchange of DNA data, dactyloscopic data and vehicle registration data between Member States shall take place using the Trans European Services for Telematics between Administrations (TESTA II) communications network and further developments thereof.

Article 5

Availability of automated data exchange

The Member States shall take all necessary measures to ensure that automated searching or comparison of DNA data, dactyloscopic data and vehicle registration data is possible 24 hours a day and seven days a week. In the event of a technical fault, the Member States' national contact points shall immediately inform each other and shall agree on temporary alternative information exchange arrangements in accordance with the legal provisions applicable. Automated data exchange shall be re-established as quickly as possible.

Article 6

[moved to Article 14 a]

Article 7

[moved to Article 2 (10)]

Article 8

Reference numbers for DNA data and dactyloscopic data

The reference numbers referred to in Article 2 and Article 8 of Decision 2007/.../JHA shall be made up of a combination of the following:

1. a code allowing the Member States, in the case of a match, to retrieve personal data and other information in their databases in order to supply it to one, several or all of the Member States in accordance with Article 5 or Article 10 of Decision 2007/.../JHA,
2. a code to indicate the national origin of the DNA profile or dactyloscopic data, and
3. with respect to DNA data, a code to indicate the type of DNA profile.

CHAPTER 3

DNA DATA

Article 9

Principles of DNA data exchange

- (1) The Member States shall use existing standards for DNA data exchange, such as the European Standard Set (ESS) or the Interpol Standard Set of Loci (ISSOL).
- (2) The transmission procedure, in the case of automated searching and comparison of DNA profiles, shall take place within a decentralised structure.
- (3) Appropriate measures shall be taken to ensure confidentiality and integrity for data in transit to other Member States, including their encryption.
- (4) The Member States shall take the necessary measures to guarantee the integrity of the DNA profiles made available or sent for comparison to the other Member States and to ensure that these measures comply with international standards such as ISO 17025.
- (5) The Member States shall use Member State codes according to the ISO 3166-1 alpha-2 standard.

Article 10

Rules for requests and answers in connection with DNA data

- (1) A request for an automated search or comparison, as referred to in Articles 3 or 4 of Decision 2007/.../JHA shall include only the following information:
 - a. the Member State code of the requesting Member State,
 - b. the date, time and indication number of the request,
 - c. DNA profiles and their reference numbers,
 - d. the types of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles),

- e. information required for controlling the database systems and quality control for the automatic search processes.¹

(2) The answer (matching report) to the request referred to in paragraph 1 shall contain only the following information:

- a. the indication whether there were one or more matches (hits) or not (no hit),
- b. the date, time and indication number of the request,
- c. the date, time and indication number of the answer,
- d. the Member State codes of the requesting and requested Member States,
- e. the reference numbers of the requesting and requested Member States,
- f. the type of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles),
- g. the requested and matching DNA profiles, and
- h. information required for controlling the database systems and quality control for the automatic search processes.

(3) Automated notification of a match shall only be provided on condition that the automated search or comparison has resulted in a match of a minimum number of loci. This minimum is set out in Chapter 1 of the Annex to this Decision.

(4) The Member States shall ensure that requests comply with the declarations issued in accordance with Article 2(3) of Decision 2007/.../JHA. These declarations will be reproduced in the Manual referred to in Article 18(2).

¹ HU requests for a more detailed definition of the type of information, at least in an exemplative manner (“such as”). The same is valid for paragraph 2(h).

Article 11

**Transmission procedure for automated search of unidentified DNA profiles
in accordance with Article 3 of Decision 2007/.../JHA**

- (1) If, in a search with an unidentified DNA profile, no match has been found in the national database or a match has been found with an unidentified DNA profile, the unidentified DNA profile may¹ then be transmitted to all other Member States' databases and if, in a search with this unidentified DNA profile, matches are found with reference DNA profiles and/or unidentified DNA profiles in other Member States' databases, these matches shall be automatically communicated and the DNA reference data transmitted to the requesting Member State; if no matches can be found in other Member States' databases, this shall be automatically communicated to the requesting Member State.
- (2) If, in a search with an unidentified DNA profile, a match is found in other Member States' databases, each Member State concerned may insert a note to this effect in its national database.

Article 12

**Transmission procedure for automated search of reference DNA profiles
in accordance with Article 3 of Decision 2007/.../JHA**

If, in a search with a reference DNA profile, no match has been found in the national database with a reference DNA profile or a match has been found with an unidentified DNA profile, this reference DNA profile may then be transmitted to all other Member States' databases and if, in a search with this reference DNA profile, matches are found with reference DNA profiles and/or unidentified DNA profiles in other Member States' databases, these matches shall be automatically communicated and the DNA reference data transmitted to the requesting Member State; if no matches can be found in other Member States' databases, this shall be automatically communicated to the requesting Member State.

¹ AT and DE reservation as this should be mandatory (using “shall”) to avoid regular volume comparisons which are very likely to exceed capacities.

Article 13

**Transmission procedure for automated comparison of unidentified DNA profiles
in accordance with Article 4 of Decision 2007/.../JHA**

- (1) If in a comparison with unidentified DNA profiles matches are found in other Member States' databases with reference DNA profiles and/or unidentified DNA profiles, these matches shall be automatically communicated and the DNA reference data transmitted to the requesting Member State.
- (2) If in a comparison with unidentified DNA profiles matches are found in other Member States' databases with unidentified DNA profiles or reference DNA profiles, each Member State concerned may insert a note to this effect in its national database.

CHAPTER 4

DACTYLOSCOPIC DATA

Article 14

Principles for the exchange of dactyloscopic data

- (1) The digitalisation of dactyloscopic data and their transmission to the other Member States shall be carried out according to a uniform data format specified in Chapter 2 of the Annex to this Decision.
- (2) Each Member State shall ensure that the dactyloscopic data it transmits are of sufficient quality for a comparison by the automated fingerprint identification systems (AFIS).
- (3) The transmission procedure for the exchange of dactyloscopic data shall take place within a decentralised structure.
- (4) Appropriate measures shall be taken to ensure the confidentiality and integrity of dactyloscopic data being sent to other Member States, including their encryption.
- (5) The Member States shall use Member State codes according to the ISO 3166-1 alpha-2 standard.

Article 14 a

Search capacities for dactyloscopic data

- (1) Each Member State shall ensure that its search requests do not exceed the search capacities specified by the requested Member State. Member States shall submit declarations as referred to in Article 18(2) of this Decision to the General Secretariat of the Council in which they lay down their maximum search capacities per day for dactyloscopic data of identified persons and for dactyloscopic data of not yet identified persons.
- (2) The maximum numbers of candidates accepted for verification per transmission are set out in Chapter 2 of the Annex to this Decision.

Article 15

Rules for requests and answers in connection with dactyloscopic data

- (1) The requested Member State shall check the quality of the transmitted dactyloscopic data without delay by a fully automated procedure. Should the data be unsuitable for an automated comparison, the requested Member State shall inform the requesting Member State without delay.
- (2) The requested Member State shall conduct searches in the order in which requests are received. Requests shall be processed within 24 hours by a fully automated procedure. The requesting Member State may, if its national law so prescribes, ask for accelerated processing of these searches and the requested Member State shall conduct these searches without delay. If deadlines cannot be met for reasons of *force majeure*, the comparison shall be carried out without delay as soon as the impediments have been removed.

CHAPTER 5

VEHICLE REGISTRATION DATA

Article 16

Principles of automated searching of vehicle registration data

- (1) For automated searching of vehicle registration data Member States shall use a version of the European Vehicle and Driving Licence Information System (EUCARIS) software application especially designed for the purposes of Article 12 of Council Decision 2007/.../JHA, and amended versions of this software.
- (2) Automated searching of vehicle registration data shall take place within a decentralised structure. (...).
- (3) The information exchanged via the EUCARIS system shall be transmitted in encrypted form.
- (4) The data elements of the vehicle registration data to be exchanged are specified in Chapter 3 of the Annex to this Decision.
- (5) In the implementation of Article 12 of Council Decision 2007/.../JHA, Member States may give priority to searches related to combating serious crime (...).

Article 17

Costs

Each Member State shall bear the costs arising from the administration, use and maintenance of the EUCARIS software application especially designed for the purposes of Article 12 of Council Decision 2007/.../JHA.

CHAPTER 5 A

POLICE COOPERATION

Article 17 a

Joint patrols and other joint operations

(1) In accordance with Chapter 5 of Council Decision 2007/.../JHA, in particular with the declarations submitted pursuant to its Articles 17 (4), 19 (2), and 19 (4), each Member State may specify its procedures for setting up joint patrols and other joint operations, its procedures for incoming requests of other Member States with regard to these operations, as well as other practical aspects, and operational modalities in relation to these operations.

(2) The General Secretariat of the Council shall compile and keep up to date the list of the competent authorities designated by the Member States, including their contact details, entitled to introduce joint patrols and other joint operations as referred to in Article 17 of Council Decision 2007/.../JHA. The General Secretariat of the Council shall inform the competent authorities about any change to the list.

(3) An initiative for the setting up of a joint operation may be made by the competent authorities of each Member State. Before the start of a specific operation, the competent authorities referred to in Article 17a(2) shall make written or verbal¹ arrangements that may cover details such as

- a) the competent authorities of the Member States for the operation;
- b) the specific purpose of the operation;
- c) the host Member State where the operation takes place;
- d) the geographical area of the host Member State where the operation takes place;
- e) the period covered by the operation;
- f) the specific assistance to be provided by the seconding Member State(s) to the host Member State, including officers or other officials, material and financial elements;
- g) the officers participating in the operation;
- h) the officer who will be in charge of the operation;
- i) the powers the officers and other officials of the seconding Member State(s) may exercise in the host Member State during the operation;

¹ HU finds that verbal arrangements should subsequently be recorded in writing.

- j) the particular arms, ammunition and equipment the seconding officers may use during the operation in accordance with Council Decision 2007/.../JHA;
- k) the logistic modalities concerning transport, accommodation and security;
- l) the bearing of costs of the joint operation if it differs from Article 35 first sentence of Council Decision 2007/.../JHA;
- m) any other possible elements required.

(4) The declarations, procedures and designations foreseen in this Article will be reproduced in the Manual referred to in Article 18(2).

CHAPTER 6

FINAL PROVISIONS

Article 18

Annex and Manual

- (1) Further details concerning technical and administrative implementation of Decision 2007/.../JHA are laid down in the Annex to this Decision. The Annex may be modified by the Council, acting by a qualified majority.

- (2) A Manual shall be prepared and kept up to date by the General Secretariat of the Council, comprising exclusively factual information provided by the Member States, through declarations made pursuant to Decision 2007/.../JHA or this Decision, or through notifications made to the General Secretariat of the Council. The Manual shall have a form of a Council Document.

Article 18a

Independent data protection authorities

Member States shall, in accordance with Article 18(2), inform the General Secretariat of the Council of the independent data protection authorities or the judicial authorities as referred to in Article 30(5) of Council Decision 2007/.../JHA.

Article 18b

Preparation of decisions referred to in Article 25(2) of Council Decision 2007.../JHA

(1) The Council shall take a decision referred to in Article 25(2) of Council Decision 2007/.../JHA on the basis of an evaluation report which shall be based on a questionnaire as set out in Chapter 4 of the Annex to this Decision.

(2) With respect to the automated data exchange according to Chapter 2 of Council Decision 2007.../JHA, the evaluation report shall also be based on an evaluation visit and a pilot run that shall be carried out when the respective Member State has informed the General Secretariat according to Article 37(2) first sentence of Council Decision 2007/.../JHA.

(3) Further details of the procedure are set out in Chapter 4 of the Annex to this Decision.

Article 19

Evaluation of the data exchange

(1) Evaluation of the administrative, technical, and financial application of the data exchange pursuant to Chapter 2 of Council Decision 2007/.../JHA shall be executed on an regular basis. The evaluation shall relate to those Member States already applying Council Decision 2007/.../JHA at the time of the evaluation and shall be carried out with respect to the data categories for which the data exchange has started among the Member States concerned. The evaluation shall be based on reports of the respective Member States.

(2) Further details of the procedure are set out in Chapter 4 of the Annex to this Decision.

Article 19a

Relationship with the Implementing Agreement of the Prüm Treaty

For the Member States, bound by the Prüm Treaty the relevant provisions of this Decision and its Annex once fully implemented shall apply instead of the corresponding provisions contained in the Implementing Agreement of the Prüm Treaty. Any other provisions of the Implementing Agreement shall remain applicable between the contracting parties of the Prüm Treaty.

Article 19 b

Implementation

Member States shall take the necessary measures to comply with the provisions of this Decision within the periods as referred to in Article 37 (1) of Council Decision 2007/.../JHA.

Article 20

Application

This Decision shall take effect twenty days following its publication in the Official Journal of the European Union.

Done at

For the Council
The President
