



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**DAPIX 149
CRIMORG 210
ENFOPOL 406
TRANS 366**

NOTE

from: The Delegations of Austria, Belgium, Hungary, Poland and Sweden
to: Working Group on Information Exchange and Data Protection (DAPIX)
Subject: Implementation of Directive 2011/82/EU of the European Parliament and the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences ('CBE Directive')
– the way forward

I. Background

On 5 November 2011, Directive 2011/82/EU of the European Parliament and the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences ('CBE Directive') was published in the Official Journal of the European Union¹. This legal instrument was based on a proposal from the Commission amended by the Belgian Presidency and successfully negotiated in the course of the Belgian, Hungarian and Polish Presidencies.

Member States have to comply by 7 November 2013 with the provisions of the CBE Directive which requests comprehensive legal and administrative activities on national level and, in particular, technical implementation activities as the Directive provides for automated searches of Vehicle Registration Data (VRD).

¹ OJ L 288 of 5.11.2011, p. 1.

If Member States have not accomplished their national implementation by 7 November 2013 they may be subject to infringement procedures conducted by the Commission as foreseen by the Treaties.

At the occasion of the adoption of the CBE Directive by the Council on 29 September 2011, the Commission delivered a Statement on the legal basis of the instrument, declaring that the Commission considers Art. 91 TFEU as the appropriate legal basis for the Directive. Furthermore, the Commission declared that it reserved its rights to use all legal means at its disposal.

II. The CBE Directive

The CBE has its legal basis in Art. 87(2) TFEU and foresees e.g. procedures for the exchange of VRD information between Member States (Art. 4) by automated searches for data related to vehicles, owners or holders. Those searches shall be conducted by using the existing software applications such as the one especially designed for the purposes of Art. 12 of Decision 2008/615/JHA, and the amended version of those software applications, in compliance with Annex I to the CBE Directive and with points 2 and 3 of Chapter 3 of the Annex to Decision 2008/616/JHA².

Advantage should be taken of the European Vehicle and Driving Licence Information System (Eucaris) software application, which is mandatory for Member States under the "Prüm Decisions".

Art. 9 of the CBE Directive empowers the Commission to adopt delegated acts concerning the update of Annex I in the light of technical progress to take into account relevant changes to Decision 2008/615/JHA and Decision 2008/616/JHA or where required by legal acts of the Union directly relevant for the update of Annex I.

² Council Decisions 2008/615/JHA and 2008/616/JHA may be referred to in the text as "Prüm Decisions".

III. The “Prüm Decisions” – lessons learned

Art. 12 of Decision 2008/615/JHA is the model for Art. 4 of the CBE Directive. The strategies and procedures developed for the implementation of the "Prüm Decisions" should be the model for the implementation of the CBE Directive.

Member States have to bear in mind that the implementation of the “Prüm Decisions” with regard to the exchange of VRD has encountered many difficulties. By 26 August 2011 all EU Member States should have fully implemented the provisions of Art. 12 of Decision 2008/615/JHA. However, by 1 December 2011 only 10 of 27 Member States were operationally exchanging VRD.

Council Conclusions adopted during the Hungarian³ and Polish⁴ Presidencies urged Member States to intensify their efforts to implement the "Prüm Decisions" as soon as possible.

The Polish Presidency has drawn up a report on the implementation of the "Prüm Decisions"⁵ based on information from the Member States. It provides a lucid summary of the (positive and negative) lessons learned in the implementation process of the "Prüm Decisions". These are,

concerning the legal act:

- the need to foresee sufficient time for the implementation (three years for data exchange provisions with regard to DNA profiles, dactyloscopic data and VRD);

concerning the implementation at EU level:

- the designation of EUCARIS as a central hub for the technical support of the Member States in the implementation and application of the technical procedures;
- the establishment of efficient and not over-bureaucratic evaluation procedures;
- the permanent monitoring of the implementation process;

concerning the implementation at national level:

- the adoption of a comprehensive strategy for the national implementation;
- the need for the allocation of sufficient staff and financial resources.

³ Doc. 10653/11

⁴ Doc. 17762/11

⁵ Doc. 16588/11

As the CBE Directive foresees a period of 2 years for the implementation of the instrument by the Member States, this exercise is even more challenging than the implementation of the "Prüm Decisions".

IV. The way towards the successful implementation of the CBE Directive

Following the considerations above the Member States must take straightforward measures in order to guarantee the successful implementation of the CBE Directive by 7 November 2013. This means that

- work must start immediately,
- DAPIX and the DAPIX subgroup of VRD experts should take all necessary actions in order to support Member States' efforts to meet the ambitious goals of the CBE Directive.

Given the fact that

- not all Member States have yet fully implemented the "Prüm Decisions" with respect to automated exchange of VRD, there is no immediate need to update Annex I in order to guarantee the implementation of the Directive,
- the very nature of the delegated act in the Directive is not to give guidelines to the Member States on the necessary technical specifications for the proper use of the proposed software application,

Member States are responsible for the technical implementation and shall take immediately all necessary measures to start the legal and technical implementation in order to meet the transposition deadline in time.

Document 17236/11 DAPIX 148 CRIMORG 209 ENFOPOL 405 TRANS 322 containing a note from the EUCARIS General Secretariat provides a starting point for the further deliberations on the specifications for the implementation of the CBE Directive.

V. Proposed actions

- Incoming Presidencies of the Council of the EU are requested to keep this dossier high on their agenda for the sake of a smooth technical implementation and to consult with the Land Transport Working Party whenever it is necessary;
- DAPIX should request EUCARIS to prepare an offer for an amended version of the Prüm software application according to the specifications in Annex I of the CBE Directive until the next DAPIX meeting;
- Based on this offer, DAPIX should order EUCARIS to develop the amended version of the Prüm software application;

DAPIX is invited to discuss this note at its meeting of 11 January 2012 and to prepare with the support of its VRD experts and EUCARIS the necessary procedures for the technical implementation and monitor at EU level the proper implementation of the CBE Directive.
