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LIMITE

COSI 100
FRONT 211
ASIM 47
DAPIX 187
ENFOPOL 234
ENFOCUSTOM 122
SIRIS 82
DATAPROTECT 97
VISA 171
FAUXDOC 23
COPEN 143
CT 43
EJUSTICE 63
JAI 421

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	8434/1/17 REV 1, 8797/17, 9348/17
Subject:	Draft Council Conclusions on the way forward to improve information exchange and ensure the interoperability of EU information systems

Following the publication of the final report by the High-Level Expert Group on Information Systems and Interoperability (8434/1/17 REV 1) and in the light of the discussion at the COSI meeting on 16 May 2017 on the basis of the discussion paper on interoperability (8797/17) as well as the Commission Communication 'Seventh progress report towards an effective and genuine Security Union' (9348/17), delegations will find enclosed the draft Council Conclusions on the way forward to improve information exchange and ensure the interoperability of EU information systems. The document was updated following the COSI Support Group meeting of 22 May 2017 and on the basis of the agreement by the COSI Support Group at its meeting on 29 May 2017 (the new text is underlined and the deleted parts are indicated in strikethrough).

Draft Council Conclusions on the way forward to improve information exchange and ensure the interoperability of EU information systems

THE COUNCIL OF THE EUROPEAN UNION

CONVINCED that the Member States of the European Union can only provide security and protection for their people through a common effort, as only together do they have the relevant means and information, in particular as regards identifying those persons who enter the Area of Security, Freedom and Justice threatening common European values;

HAVING REGARD to the Renewed EU Internal Security Strategy of 16 June 2015¹, stating that special attention should be given to European Union and Member State actions aimed at improving information exchange and accessibility, especially by ensuring the interoperability of different information systems and by encouraging the most appropriate choice of the relevant information exchange channel;

RECALLING that interoperability is a priority at the highest political level, as stated by the European Council in its Conclusions of 18 December 2015: 'The recent terrorist attacks demonstrate in particular the urgency of enhancing relevant information sharing, notably as regards (...) ensuring the interoperability of the relevant databases with regard to security checks';

RECALLING that the recent terrorist attacks and other criminal acts showed that the use of fraudulent identity information repeatedly played a key role in the perpetrators' *modus operandi*;

¹ 9798/15

BEARING IN MIND that the Commission in its Communication 'Stronger and Smarter Information Systems for Borders and Security' of 6 April 2016² listed the following shortcomings related to information systems: sub-optimal use of functionalities of existing information systems, gaps in the EU's architecture of data management, a complex landscape of differently governed information systems, and a fragmented architecture of data management for border control and security;

RECALLING that in the aforementioned Communication, the Commission announced the setting up of the High-Level Expert Group on Information Systems and Interoperability, tasked to address the legal, technical and operational aspects of the different options to achieve interoperability of information systems, including the necessity, technical feasibility and proportionality of available options and their data protection implications,

RECALLING that the Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area³, endorsed by the Council on 9-10 June 2016, includes an analysis of key challenges in relation to the EU information architecture in the JHA area and lists dedicated actions to address those challenges;

HAVING REGARD to ~~the EU~~ Decision (EU) 2015/2240 of the European Parliament and of the Council of 25 November 2015 establishing a programme on interoperability solutions and common frameworks for European public administrations, businesses and citizens (ISA2 programme) as a means for modernising the public sector⁴;

CONVINCED that the interoperability of information systems is an area where the EU can make major progress and make a real difference for the benefit of all citizens and that a more integrated data management architecture is necessary in order to enhance both external border management and internal security in the EU by maximising the benefits of existing information systems, developing new and complementary actions to address existing gaps and improving the interoperability of information systems, as identified by the European Council and the Council;

² 7644/16

³ 9368/1/16 REV 1

⁴ OJ L 318, 4.12.2015, p. 1

AWARE THAT the quality of information shared and stored in EU databases is of utmost importance, and that the reliability of the stored data is indispensable in order to avoid the risk of mismatches and non-hits undermining the value of information systems;

CONSIDERING that access by Member State authorities competent for the prevention, detection and investigation of terrorist offences or of other serious criminal offences to EU information systems in the area of Justice and Home Affairs is of particular importance in terms of ensuring security at external borders, as well as internal security in all Member States, while also further contributing to maximising the value of such systems;

RECOGNISING that some of the current EU information systems are unevenly fed and consulted by Member States which prevents the full potential of those systems, in particular in the fight against serious crime and terrorism, from being exploited;

ACKNOWLEDGING that new information systems might also be needed in order to fill the current information gaps for border management and law enforcement, such as in relation to border crossings by EU citizens, ~~or~~ holders of long-stay visas, residence cards and residence permits;

CONVINCED that solutions ensuring the interoperability of European data information systems are essential to tackle terrorist, crime-related and migratory challenges that the Union is facing, in particular by ensuring that individuals whose alphanumeric and/or biometric data are known in one database are recognised when that data is compared with data in another database;

RECALLING the Council Conclusions on Developing the EU Customs Union and its Governance⁵, the Council Conclusions on the Commission Action plan to strengthen the European response to travel document fraud⁶, the Council Conclusions on the sustainability of e-CODEX⁷ and the Roadmap on e-CODEX⁸, and the Council Conclusions on improving criminal justice in cyberspace⁹, in relation to various information systems in the area of Justice and Home Affairs;

AWARE THAT the increased sharing of information and the implementation of interoperability solutions will require technical and human resources as well as financial means at the EU level and within Member States;

UNDERLINING that Member States, EU institutions and agencies have an obligation to respect fundamental rights, ~~including~~ in particular the right to privacy and the right to the protection of personal data;

HEREBY

WELCOMES the final report by the High-Level Expert Group on Information Systems and Interoperability, including the statements by the EU Fundamental Rights Agency (FRA), the European Data Protection Supervisor (EDPS) and the EU Counter-Terrorism Coordinator (CTC) annexed to the report;

WELCOMES the finding by the EDPS, in the annex to the report, that the main obstacles to sustainable interoperability arise from the current legal basis of the information systems rather than merely from the data protection principles and that any solution should fully comply with data protection principles, ~~in particular the principle of purpose limitation and user's access rights~~;

⁵ 7585/1/17 REV 1 [to be adopted on 23 May 2017]

⁶ 7696/17, 15502/16

⁷ 15774/14

⁸ 14465/16

⁹ 10007/16

WELCOMES the Commission's views and the proposed way forward to achieve the interoperability of information systems by 2020 on the basis of recommendations by the High-Level Expert Group, as set out in the Communication 'Seventh progress report towards an effective and genuine Security Union' of 16 May 2017¹⁰;

IS COMMITTED to follow up on the discussions of the High-Level Expert Group with an approach that takes into account the cross-sectoral nature of challenges in the fields of migration, borders and security in a dedicated Council forum, under strategic guidance and close monitoring by the Standing Committee on Operational Cooperation on Internal Security (COSI). Where relevant, the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) may be consulted;

CALLS ON the Member States, the Commission and the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) to improve **the quality of data** in the EU information systems by implementing as far as possible the data quality roadmap¹¹ in the context of the fifth action list of the Renewed Information Management Strategy¹², and to develop, together with European Union Agency for Law Enforcement Training (CEPOL), and, where relevant, in cooperation with the European Union Agency for Law Enforcement Cooperation (Europol) and the European Border and Coast Guard Agency (Frontex), the necessary training modules on data quality for staff responsible for feeding and monitoring the systems at national level;

¹⁰ 9348/17

¹¹ 13301/1/16 REV 1

¹² 5307/2/17 REV 2

INVITES the Commission, together with eu-LISA and in consultation with Member States, to establish – for all systems under the agency’s operational responsibility – automated data quality control mechanisms and common data quality indicators, to work towards establishing a data warehouse with anonymised data, and, where necessary and appropriate, to present corresponding legislative proposals by the first quarter 2018;

CALLS ON the Commission, as regards **access to EU information systems in the area of Justice and Home Affairs by authorities competent for the prevention, detection and investigation of terrorist offences or of other serious criminal offences**, to explore options as proposed by the High-Level Expert Group for achieving greater simplification, consistency, effectiveness and attention to operational needs, and to make corresponding legislative proposals providing a necessary framework to facilitate such access in compliance with data protection principles, and present it for discussion at the Council in early 2018;

CALLS ON Member States, as regards **existing EU information systems**, to fully implement and apply the legislation on the Schengen Information System (SIS), the Visa Information System (VIS), the European Dactyloscopy (Eurodac) and Prüm Decisions, and to use these information systems and feed databases covered by those instruments in order to fully exploit their potential;

INVITES the Commission, Member States and eu-LISA, taking into consideration the findings of the High-Level Expert Group, to continue cooperating very closely on technical and operational improvements for the SIS, the VIS and Eurodac in order to continuously improve ~~these~~ the existing information systems and to maximise their use, as well as to maximise their added value for the competent authorities using them, in particular by establishing a central automated fingerprint identification system (AFIS) within SIS. A possible solution to allow the ad-hoc and reciprocal exchange of information between Member States whether they apply the Schengen acquis in full, not yet or partially or do not take part in it ~~non-Schengen Member States and Member States which are partially using the instruments associated with Schengen~~, as envisaged in the Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area, should also be considered;

CALLS on the co-legislators to seek a speedy and thorough finalisation of the negotiations on the legislative proposals for the improvement of the SIS and Eurodac;

INVITES the Commission, Europol and eu-LISA in consultation with Member States to explore and promote synergies between Europol data and other existing systems;

RECALLS the invitation in its Conclusions of 27 March 2017¹³ to the Commission to take the necessary actions, including a legislative proposal establishing the system of False and Authentic Documents Online (FADO) on a more solid basis, while ensuring its continuity and development;

IS COMMITTED, as regards **new EU information systems**, to seek a swift agreement on the proposals to establish an Entry/Exit System (EES) and to establish the European Travel Information and Authorisation System (ETIAS) in line with the conclusions of the European Council of December 2016, the Conclusions of the President of the European Council of March 2017 and the Joint Declaration on the EU's legislative priorities;

INVITES the Commission to:

- present a supplementary legislative proposal on centralised ECRIS-TCN by the end of June 2017;
- ~~— present a discussion paper to investigate detailed options for a joint justice and home affairs approach to sharing criminal records proactively;~~
- explore as soon as possible, after discussions among the relevant stakeholders about the possible need for the systematic recording of border crossings of all EU citizens, the proportionality and feasibility of such systematic recording, for example, in a dedicated database, and present its findings for discussion by the Council by the first quarter 2018;

¹³ 7696/17

- explore, together with Member States and with the technical support of eu-LISA, the feasibility of, possibilities for and alternatives to the targeted registration of achieved SIS hits, including the possible access by Europol thereto, and the improved availability of supplementary information contained in SIS forms, and present its findings for discussion by the Council by the first quarter 2018;
- undertake a feasibility study as a matter of priority for the establishment of a central EU repository containing information on long-stay visas, residence cards and residence permits, consider whether it is appropriate to include local border traffic permits in such a repository, and present its findings for discussion by the Council by the end 2017;

INVITES the Commission, as regards pursuing **the three dimensions of interoperability as proposed by the High-Level Expert Group**, together or in cooperation with eu-LISA, EDPS, FRA and other relevant stakeholders, where relevant and while ensuring the full compliance with the requirements of the Charter of Fundamental Rights and in particular the comprehensive framework for the protection of personal data in the EU, to:

- work towards creating a European search portal capable of searching in parallel all relevant EU systems in the areas of borders, security and asylum. The possibility of access to Europol data through the European search portal should also be examined together with Europol, and it should be explored, in consultation with Interpol, whether Interpol's databases could be accessed through a European search portal and, if so, which databases and under what conditions;
- explore the future implementation of a shared biometric matching service for all types of biometric data and analyse its use for the purpose of flagging the existence of biometric data from other systems, including the analysis, together with Europol, of how such a shared biometric matching service could also be used to cross-check Europol data;
- explore the future establishment of a common identity repository, including examining, together with Europol, the possibility of including Europol data in such repository;

- make legislative proposals as appropriate in line with the outcome of feasibility studies in early 2018, including a thorough impact assessment, in order to implement these interoperability solutions in practice by 2020;

INVITES the Commission, as regards **other aspects of interoperability and interoperability with other systems or information exchange mechanisms**, together or in cooperation with eu-LISA or other relevant stakeholders, such as national experts, to:

- consider, together with Member States, Europol, eu-LISA, Frontex and Interpol, ways to establish Universal Message Format (UMF) governance at EU level, allowing for a structured decision-making process and acting as a change management mechanism, taking into account the findings of the UMF-3 project in the context of the Renewed Information Management Strategy¹⁴, and present its findings for discussion by the Council in 2018;
- continue to develop the import control system and undertake a feasibility study to further explore the technical, operational and legal aspects of interoperability of the security and border management systems with customs systems, and present its findings for discussion by the Council by the end of 2018;
- undertake a feasibility study on a centralised mechanism for advance passenger information (API), including the need for a centralised router, enabling the interested Member States to have a one-stop-shop connectivity for airlines and providing API data to both national systems and central systems (EES/VIS, ETIAS), and present its findings for discussion by the Council by second quarter 2018;

¹⁴ 5307/2/17 REV 2

- without prejudice to the need for the full implementation of the EU PNR Directive, consider extending the feasibility study for the implementation of a centralised API router and also analyse its use for passenger name records (PNR), enabling the interested Member States to have a one-stop-shop connectivity for airlines and providing PNR data to national systems once Member States have implemented the EU PNR Directive, and present its findings for discussion by the Council by the end 2018;

- strengthen the access of EU JHA agencies to various EU information systems according to their respective mandates, and ensure that agencies use their right of access to the fullest possible extent, while ensuring that data owned by a Member State is not shared without that Member State's consent;

INVITES Europol to continue its work on the project 'Querying Europol Systems' (QUEST), including in support of the development of national single-search interfaces, and ensure the facilitation of the roll-out to Member States by the end of 2018;

CONSIDERING that, in the context of **improving cross-border information exchange between judicial authorities**, pursuant to the Progress Report from the Commission Services following the Council Conclusions on improving criminal justice in cyberspace, the communication of requests for e-evidence and the responses thereto should be conducted, ~~if appropriate,~~ through e-CODEX, and the urgent need to establish a sustainable framework in terms of the full lifecycle of development and operational management of e-CODEX in the interest of participating authorities;

INVITES the Commission to present a proposal for ensuring the sustainability of e-CODEX, providing the necessary legal and technical arrangements enabling eu-LISA to ensure its maintenance and interoperability, so as to allow this agency to host e-CODEX solutions by the end of 2018;

CALLS on the Commission, in the preparation of future initiatives addressing information systems in the area of justice and home affairs, to assess the impact on **fundamental rights, including data protection principles**, ~~into account~~ and to consider all possibilities that technology offers for privacy by design solutions;

LOOKS FORWARD to the Commission's legislative proposal by the end of June 2017 on strengthening the mandate and resources of eu-LISA enabling it to develop the interoperability approach in line with these Conclusions, and IS COMMITTED to considering this proposal as a matter of priority;

UNDERLINES that all proposals to improve or establish EU information systems should take into account the necessity of additional technical, human and financial resources for the implementation thereof, ensure effective operational and information management processes and the training of end-users, in order to accompany the measures set out in these Conclusions;

INVITES the incoming Presidency to **update and streamline the Roadmap** to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area as a comprehensive tool within the Council-, ~~incorporating~~ ~~It should incorporate~~ the recommendations of the High-Level Expert Group in line with these Conclusions, the actions of the updated Information Management Strategy (IMS) for EU internal security, and all other relevant actions contributing to the guidance, implementation and monitoring of various activities aimed at improving information management and the interoperability of EU information systems in the area of Justice and Home Affairs with a coherent approach seeking synergy and avoiding overlaps;

INVITES all the relevant stakeholders to continue implementing the Roadmap.