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REPORT

on the initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on the implementation of Decision 2008/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime
(11563/2007 – 11045/1/2007 – C6-0409/2007 – 2007/0821(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Bárbara Dührkop Dührkop

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
PROCEDURE	18

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on the implementation of Decision 2008/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (11563/2007 – 11045/1/2007 – C6-0409/2007 – 2007/0821(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Federal Republic of Germany (11563/2007 and 11045/1/2007),
 - having regard to Article 34(2)(c) of the EU Treaty,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0409/2007),
 - having regard to Rules 93 and 51 and Rule 41(4) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0099/2008),
1. Approves the initiative of the Federal Republic of Germany as amended;
 2. Calls on the Council to amend the text accordingly;
 3. Calls on the Council and the Commission, following the entry into force of the Treaty of Lisbon, to give priority to any future proposal to amend the Decision in accordance with Declaration No 50 concerning Article 10 of the Protocol on transitional provisions to be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community;
 4. Is determined to examine any such future proposal by urgent procedure in accordance with the procedure referred to in paragraph 3 and in close cooperation with national parliaments;
 5. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 6. Calls on the Council to consult Parliament again if it intends to amend the initiative of the Federal Republic of Germany substantially;
 7. Instructs its President to forward its position to the Council and the Commission, and the government of the Federal Republic of Germany.

Amendment 1

Initiative by the Federal Republic of Germany Recital 3 a (new)

*Text proposed by the Federal Republic of
Germany*

Amendment

(3a) It is necessary for the Council to adopt the framework decision on procedural rights as soon as possible in order to lay down certain minimum rules on the availability of legal assistance to individuals in the Member States.

Justification

A uniform set of procedural guarantees at EU level is needed.

Amendment 2

Initiative by the Federal Republic of Germany Recital 3 b (new)

*Text proposed by the Federal Republic of
Germany*

Amendment

(3b) The data protection rules laid down in Decision 2008/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, are to be created in the absence of an adequate third pillar legal instrument on data protection. When approved, that general legal instrument should be applied to the entire area of police and judicial cooperation in criminal matters, provided that its level of data protection is adequate and, in any event, no lower than the protection laid down in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and the Additional Protocol

thereto regarding supervisory authorities and transborder data flows of 8 November 2001.

Justification

A level of data protection which is high, harmonized, and therefore appropriate to guarantee both citizens rights and law enforcement effectiveness in an area of Freedom, Security and Justice is needed. In this regard, the "the draft framework decision on data protection in third pillar" should act as 'lex generalis' while allowing the applicability of further specific guarantees and tailored stricter standards laid down by the Council Prüm initiative.

Amendment 3

**Initiative by the Federal Republic of Germany
Recital 3 c (new)**

*Text proposed by the Federal Republic of
Germany*

Amendment

(3c) Special categories of data concerning racial or ethnic origin, political opinion, religious or philosophical belief, party or trade union membership, sexual orientation or health should be processed only if absolutely necessary and in proportion to the purpose of the specific case and in compliance with specific safeguards.

Amendment 4

**Initiative by the Federal Republic of Germany
Recital 3 d (new)**

*Text proposed by the Federal Republic of
Germany*

Amendment

(3d) With a view to efficient police cooperation, it should be possible to establish joint task forces rapidly and unbureaucratically.

Amendment 5

Initiative by the Federal Republic of Germany Recital 4 a (new)

*Text proposed by the Federal Republic of
Germany*

Amendment

(4a) The measures provided for in this Decision are in accordance with the opinion of the European Data Protection Supervisor of 19 December 2007,

Justification

The implementing measure of the Prüm decision will often affect the processing of personal data and therefore the opinion of European Data Protection Supervisor on the matter is highly recommended although a member state taking the initiative under Title VI of the EU Treaty has no obligation to ask for it.

Amendment 6

Initiative by the Federal Republic of Germany Article 2 – point -a (new)

*Text proposed by the Federal Republic of
Germany*

Amendment

(-a) “personal data” shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;

Justification

The Council decision on Prüm does not contain any clear definition of personal data and this lack persists in the implementing decision. Therefore, the reference to the definition of

personal data given by article 2(a) of Directive 95/46 (EC)¹ shall be inserted in the current implementing decision on Prüm.

Amendment 7

Initiative by the Federal Republic of Germany

Article 2 – point a

Text proposed by the Federal Republic of Germany

(a) “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 and DNA data or dactyloscopic data stored in the databases of one, several, or all of the Member States;

Amendment

(a) “search” and “comparison” as referred to in Articles 3, 4 and 9 of Decision 2008/.../JHA **shall** 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 and DNA data or dactyloscopic data stored in the databases of one, several, or all of the Member States;

Amendment 8

Initiative by the Federal Republic of Germany

Article 2 – point b

Text proposed by the Federal Republic of Germany

(b) “automated searching” as referred to in Article 12 of Decision 2007/.../JHA **means** an online access procedure for consulting the databases of one, several, or all of the Member States;

Amendment

(b) “automated searching” as referred to in Article 12 of Decision 2008/.../JHA **shall mean** an online access procedure for consulting the databases of one, several, or all of the Member States;

¹ OJ L 281, 23/11/1995, p. 31

Amendment 9

Initiative by the Federal Republic of Germany Article 2 – point c

*Text proposed by the Federal Republic of
Germany*

Amendment

(c) “DNA reference data” **means** a DNA profile and a reference number;

(c) “DNA reference data” **shall mean** a DNA profile and a reference number;

Amendment 10

Initiative by the Federal Republic of Germany Article 2 – point d

*Text proposed by the Federal Republic of
Germany*

Amendment

(d) “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);

(d) “DNA profile” **shall mean** 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);

Amendment 11

Initiative by the Federal Republic of Germany Article 2 – point e

*Text proposed by the Federal Republic of
Germany*

Amendment

(e) "non-coding part of DNA" **means** chromosome **regions not genetically expressed**, i.e. not known to provide **for any functional properties of an organism**;

(e) "non-coding part of DNA" **shall mean** chromosome **zones containing no genetic expression**, i.e. not known to provide **information about specific hereditary characteristics; notwithstanding any scientific progress, no more information shall be revealed from the non-coding part of DNA**;

Amendment 12

Initiative by the Federal Republic of Germany Article 2 – point f

*Text proposed by the Federal Republic of
Germany*

Amendment

(f) “reference DNA profile” **means** the DNA profile of an identified person;

(f) “reference DNA profile” **shall mean** the DNA profile of an identified person;

Amendment 13

Initiative by the Federal Republic of Germany Article 2 – point g

*Text proposed by the Federal Republic of
Germany*

Amendment

(g) “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;

(g) “unidentified DNA profile” **shall mean** the DNA profile obtained from traces collected during the investigation of criminal offences and belonging to a person not yet identified;

Amendment 14

Initiative by the Federal Republic of Germany Article 2 – point h

*Text proposed by the Federal Republic of
Germany*

Amendment

(h) “note” **means** a Member State’s marking on a DNA profile in its national database indicating that there has already been a match for that DNA profile on another Member State’s search or comparison;

(h) “note” **shall mean** a Member State’s marking on a DNA profile in its national database indicating that there has already been a match for that DNA profile on another Member State’s search or comparison;

Amendment 15

Initiative by the Federal Republic of Germany

Article 2 – point i

*Text proposed by the Federal Republic of
Germany*

(i) “dactyloscopic data” **means** fingerprint images, images of fingerprint latents, palm prints, palm print latents as well as templates of such images (coded minutiae), when they are stored and dealt with in an automated database;

Amendment

(i) “dactyloscopic data” **shall mean** fingerprint images, images of fingerprint latents, palm prints, palm print latents as well as templates of such images (coded minutiae), when they are stored and dealt with in an automated database;

Amendment 16

Initiative by the Federal Republic of Germany

Article 2 – point j

*Text proposed by the Federal Republic of
Germany*

(j) “vehicle registration data” **means** the data-set as specified in Chapter 3 of the Annex to this Decision;

Amendment

(j) “vehicle registration data” **shall mean** the data-set as specified in Chapter 3 of the Annex to this Decision;

Amendment 17

Initiative by the Federal Republic of Germany

Article 2 – point (k)

*Text proposed by the Federal Republic of
Germany*

(k) “individual case”, as referred to in Article 3(1), second sentence, Article 9(1), second sentence and Article 12(1), second sentence, of Decision 2007/.../JHA, **means** a 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.

Amendment

(k) “individual case”, as referred to in Article 3(1), second sentence, Article 9(1), second sentence and Article 12(1), second sentence, of Decision 2008/.../JHA, **shall mean** a 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.

Amendment 18

Initiative by the Federal Republic of Germany Article 3 a (new)

*Text proposed by the Federal Republic of
Germany*

Amendment

Article 3a
**Requests regarding acquitted or
discharged persons**
**In accordance with Chapters 3 and 4 of
this Decision, reports that match the DNA
profile or dactyloscopic data of persons
who have been acquitted or discharged
shall be exchanged only if the database is
precisely circumscribed and the category
of data subject to the inquiry is clearly
defined by the national law.**

Justification

In accordance with paragraphs 41 and 42 of the opinion of the European Data Protection Supervisor opinion of January 8 2008 (Council Doc 5056/08) DNA and fingerprint data of innocent people should not be exchanged.

Amendment 19

Initiative by the Federal Republic of Germany Article 8 – paragraph 1 – point a

*Text proposed by the Federal Republic of
Germany*

Amendment

(a) the Member State code of the
requesting Member State;

(a) the Member State code of the
requesting Member State **and the code of
the consulting national authority;**

Amendment 20

Initiative by the Federal Republic of Germany Article 17 – paragraph 3 – subparagraph i

*Text proposed by the Federal Republic of
Germany*

Amendment

(i) the powers the officers and other

(i) the powers the officers and other

officials of the seconding Member State(s) may exercise in the host Member State during the operation;

officials of the seconding Member State(s) may exercise in the host Member State during the operation; ***those powers shall include, in particular, the rights of surveillance, hot pursuit, arrest and questioning;***

Amendment 21

Initiative by the Federal Republic of Germany Article 18 – paragraph 1

*Text proposed by the Federal Republic of
Germany*

Amendment

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

1. Further details concerning the technical and administrative implementation of Decision 2008/.../JHA are set out in the Annex to this Decision. The Annex may be modified by the Council, acting by a qualified majority ***after consulting the European Parliament in accordance with Article 34(2)(c) of the Treaty on European Union.***

Justification

Any modification to the Annex shall follow the current procedure provided by Article 34(2) (c) and article 39 of the Treaty on European Union which requires the consultation of the European Parliament by the Council.

Amendment 22

Initiative by the Federal Republic of Germany Article 20 – paragraph 1

*Text proposed by the Federal Republic of
Germany*

Amendment

1. The Council shall take a decision referred to in Article 25(2) of 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.

1. The Council shall take a decision referred to in Article 25(2) of 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. ***The independent data protection authorities of***

the Member State(s) concerned shall be fully involved in the evaluation procedure set out in Chapter IV of the Annex to this Decision.

Justification

Any decision related to the implementation of data protection rules shall require the full involvement of the competent data protection authorities of the Member state concerned because of the essential advisory role of these authorities in the matter.

Amendment 23

**Initiative by the Federal Republic of Germany
Article 21 – paragraph 1**

*Text proposed by the Federal Republic of
Germany*

Amendment

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

1. An evaluation of the administrative, technical and financial application of the data exchange pursuant to Chapter 2 of Decision 2008/.../JHA shall be carried out on an annual basis. ***Such evaluation shall include an assessment of the consequences of differences in techniques and criteria for collecting and storing DNA data in the Members States. The evaluation shall also include an assessment of the results related to the proportionality and the effectiveness of the cross-border exchange of the various types of DNA data.*** The evaluation shall relate to those Member States already applying Decision 2008/.../JHA at the time of the evaluation and shall be carried out with respect to the data categories for which data exchange has started among the Member States concerned. The evaluation shall be based on reports of the respective Member States.

Justification

The evaluation of the results of data exchange should not merely concern technical and administrative aspects of the exchange, but should include an assessment of the consequences of big differences in criteria for and techniques in collecting and storing DNA in the member states, and the assessment should also address proportionality and effectiveness, since the

added value of this large extension of cross-border data exchange has to be proven feasible against the results.

Amendment 24

Initiative by the Federal Republic of Germany Article 21 – paragraph 2 a (new)

*Text proposed by the Federal Republic of
Germany*

Amendment

2a. The General Secretariat of the Council shall transmit to the European Parliament and the Commission on a regular basis the results of the evaluation of data exchange in the form of a report as referred to in Chapter IV, paragraph 2(1) of the Annex to this Decision.

Justification

The correct and effective implementation of the Prüm decision along with its implementing measure is an absolute priority for the European Parliament which shall be fully informed on the progress evaluation of these instruments.

Amendment 25

Initiative by the Federal Republic of Germany Addendum to the Initiative – Chapter 1 – point 1.1 – subparagraph 3

*Text proposed by the Federal Republic of
Germany*

Amendment

Inclusion Rule:

The DNA-profiles made available by the Member States for searching and comparison as well as the DNA-profiles sent out for searching and comparison must contain at least 6 loci and **may** contain **other** loci or blanks depending on their availability. The reference DNA profiles must contain at least 6 of the 7 ESS/ISSOL loci. In order to raise the accuracy of matches, **it is recommended that** all available alleles be stored in the indexed DNA profile **data pool**.

Inclusion Rule:

The DNA-profiles made available by the Member States for searching and comparison as well as the DNA-profiles sent out for searching and comparison must contain at least 6 loci and **must** contain **additional** loci or blanks depending on their availability. The reference DNA profiles must contain at least 6 of the 7 ESS/ISSOL loci. In order to raise the accuracy of matches, all available alleles **must** be stored in the indexed DNA profile **database and be used for searching and comparison. Each Member State must**

implement, as soon as practicable, any new ESS of loci adopted by the EU.

Justification

In order to compare DNA profiles, the accuracy of the match between values of compared loci is an essential condition. The higher is the number of loci that match, the less likely it is that there is a false match between DNA profiles that have been compared. The European Standard Set of Loci (ESS) contains 7 loci but this number could increase in the future. Furthermore, there are national database already working with comparisons on the basis of 10 loci (higher number than the ESS of loci) and as a rule they should be compelled to use all loci available since the accuracy of the match increases with the number of loci compared.

PROCEDURE

Title	Cross-border cooperation to combat terrorism and cross-border crime		
References	11563/2007 – C6-0409/2007 – 2007/0821(CNS)		
Date of consulting Parliament	9.11.2007		
Committee responsible Date announced in plenary	LIBE 15.11.2007		
Rapporteur(s) Date appointed	Bárbara Dührkop Dührkop 29.11.2007		
Discussed in committee	31.1.2008	27.2.2008	27.3.2008
Date adopted	27.3.2008		
Result of final vote	+	31	
	-	2	
	0	4	
Members present for the final vote	Alexander Alvaro, Philip Bradbourn, Carlos Coelho, Esther De Lange, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop, Armando França, Patrick Gaubert, Roland Gewalt, Jeanine Hennis-Plasschaert, Lívia Járóka, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Sarah Ludford, Javier Moreno Sánchez, Rareș-Lucian Niculescu, Athanasios Pafilis, Martine Roure, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka		
Substitute(s) present for the final vote	Edit Bauer, Sophia in 't Veld, Jean Lambert, Marian-Jean Marinescu, Bill Newton Dunn, Nicolae Vlad Popa, Herbert Reul		
Substitute(s) under Rule 178(2) present for the final vote	Manolis Mavrommatis		