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NOTE

From:	General Secretariat of the Council
To:	Working Party on JHA Information Exchange (IXIM)
Subject:	Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation ("Prüm II"), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2019/818 of the European Parliament and of the Council – Compilation of comments on document 14204/21 - blocks 1 and 2

Delegations will find attached the above-mentioned document.

ANNEX

Table of contents – Compilation of comments on document 14204/21, blocks 1 and 2

AUSTRIA

searches of the router and the Common Identity Repository and in order to store reports and statistics of the router on the Common Repository for Reporting and Statistics it is therefore necessary to amend Regulation (EU) 2019/818. Those Regulations should therefore be amended accordingly.

(24) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(25) [In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Regulation.] OR [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

(26) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[11] and delivered an opinion on [XX][12].

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a framework for the exchange of information between authorities responsible for the prevention, detection and investigation of criminal offences and for identification of missing persons and unidentified human remains (Prüm II).

This Regulation lays down the conditions and procedures for the automated searching of DNA profiles, dactyloscopic data, facial images, police records and certain vehicle registration data and the rules regarding the exchange of core data following a ~~match~~ hit.

Article 2

Purpose

[11] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

[12] [OJ C …].

Commented [SR(1]: The possible identification of missing persons (high risk missing persons where an disaster, accident or suicide is possible) and unidentified human remains is beside of possible identifications of such missing persons and unknown human remains which are which could be related to a criminal offence are of very great importance. This task is a task of every national security authority and can only be solved on a national level by using the national DNA data bases which are always exclusively operated by the Law Enforcement authorities (police) of the MS. It is therefore also a task of the police authorities under several EU regulations. See TFEU Article 16(2), 82(1) 87(2); SIS Police Regulation 2018/1862 Article 32 and IO Regulation 2019/818, Article 20. Such identification which could exlusively achieved from police authorities with their biometric databases sufficiently is already from the principle of humanitarian tasks of the EU police authorities of very great importance for the relatives of such victims even if it should "only" be a disaster, accident or suicide. This was also accepted immediate from European Parliament in the Interoperability Trilogue in 2018.

Commented [SR(2]: Follow up data (Prüm 2nd step) should never provided only after a match furthermore exlusivelly after a confirmed match which is always a "hit" and not a "match".

The purpose of Prüm II shall be to step up cross-border cooperation in matters covered by Part III, Title V, Chapter 5 of the Treaty on the Functioning of the European Union, particularly the exchange of information between authorities responsible for the prevention, detection and investigation of criminal offences~~.~~ and for identification of missing persons and unidentified human remains.

The purpose of Prüm II shall also be to allow ~~for~~ the search for missing persons and unidentified human remains by authorities responsible for the prevention, detection and investigation of criminal offences and for identification of missing persons and unidentified human remains~~.~~

Article 3

Scope

This Regulation applies to the national databases used for the automated transfer of informations in the categories of DNA profiles, dactyloscopic data, facial images, police records, driving licence data and certain vehicle registration data.

Article 4

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'loci' means the particular molecular structure at the various DNA locations;

(2) 'DNA (forensic) profile' means a letter or number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, the particular molecular structure at the various DNA locations;

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

(4) 'DNA reference data' means DNA profile and the reference number referred to in Article 9;

(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) 'dactyloscopic data' means fingerprint images, images of fingerprint latents, palm prints, palm print latents and templates of such images (coded minutiae), when they are stored and/or dealt with in an automated database;

(8) 'dactyloscopic reference data' means dactyloscopic data and the reference number referred to in Article 14;

(9) 'individual case' means a single investigation file;

(10) 'facial image' means digital image of the face;

(11) 'biometric data' means DNA profiles, dactyloscopic data or facial images;

Commented [SR(3]: The extension of online searches in accordance with the recommendations of the EU Member States to include driving licence data and facial images contained therein for identification purposes is a very important investigative tool. This is a data application (RESPER) that essentially already exists in Eucaris and can already be used in cross-border cooperation and online data access not only by registration and driving licence authorities but even by insurance companies for such identifications according to local reasons. It is inexplicable why such data should not be usable by law enforcement authorities there for the security of the EU and for the avoidance, prevention or investigation of crimes or terrorist offences. Arguments of alleged disproportionality are in no way tenable in this LEA tasks.

Commented [SR(4]: It is generally recommended to strictly adhere to the very good definitions of the worldwide ISO standard 19794 for all forensic terms, unless additional separate terms are absolutely necessary. As a rule, however, this will not be the case for such forensic terms, as the ISO standards currently being revised are already based on international biometric data exchange terms in the sense of Prüm or Interpol cooperation (see, for example, ISO 19794-14 for DNA data). In any case, it is essential to include the term hit/no hit, which also has significant legal implications for Prüm cooperation and the provision of follow-up data, and which must also be included as a transmission date in the newly developed Prüm data transmission processes. See also the reports of the MS Prüm focus groups.

Commented [SR(5]: Storage is not binding necessary. There are also only "search" transactions in AFIS / ABIS systems possible.

(12) 'match' means the existence of a correspondence as a result of an automated comparison between personal data recorded or being recorded in an information system or database;

(13) 'candidate' means data with which a match occurred;

(x) Hit means the confirmed positive identification result confirmed by a human being (expert) after forensic verification/valitation.

(x) NoHit menas a non-match or also a negative result after being done in forensic verifiction /valitation by a human being (from expert detected adventitious match)

(14) 'requesting Member State' means the Member State which is conducting a search through Prüm II;

(15) 'requested Member State' means the Member State in which databases the search is conducted through Prüm II by the requesting Member State;

(16) 'police records' means any information available in the national register or registers recording data of competent authorities, for the prevention, detection and investigation of criminal offences;

(17) 'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;

(18) 'Europol data' means any personal data processed by Europol in accordance with Regulation (EU) 2016/794;

(19) 'supervisory authority' means an independent public authority established by a Member State pursuant to Article 41 of Directive (EU) 2016/680 of the European Parliament and of the Council[13];

(20) 'SIENA' means the secure information exchange network application, managed by Europol, aimed at facilitating the exchange of information between Member States and Europol;

(21) 'significant incident' means any incident unless it has a limited impact and is likely to be already well understood in terms of method or technology;

(22) 'significant cyber threat' means a cyber threat with the intention, opportunity and capability to cause a significant incident;

(23) 'significant vulnerability' means a vulnerability that will likely lead to a significant incident if it is exploited;

(24) 'incident' means an incident within the meaning of Article 4(5) of Directive (EU) …/… of the European Parliament and of the Council[14] [*proposal NIS 2*].

Commented [SR(6]: This definition is completely insufficient and unclear to determine which data files and databases can be used at all. In Austria, more than 20 different databases, which can be used for criminal investigation purposes and which have to be checked in order to provide useful information, are consulted in national and international criminal investigation requests. This starts with the very important criminal police protocol databases of the international criminal police central office (which also contains a lot of data provided by other states and which may not be made available to other states without their consent - data owners' principle) and goes on to criminal records, criminal complaint databases, detention databases and registration databases and even social security databases and the like. In A T's opinion, online access to such databases with automatic data queries and data provision with search arguments that are absolutely insecure and, for example, in the case of Arabic or Asian names, securely enable completely incorrect matches and data provision from non-data subjects in every query, are not only unacceptable from a data protection perspective furthermore also for operative reasons, because such serches will be never correct (e.g. after searches with Arabic or Asian personal data) and will provide therefore with each search numerous wrong matches.

[13] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

[14] Directive (EU) …/… of the European Parliament and of the Council… (OJ..).

CHAPTER 2

EXCHANGE OF DATA

SECTION 1

DNA profiles

Article 5

Establishment of national DNA ~~analysis files~~database

1. Member States shall ~~open and~~ keep national DNA ~~analysis files~~database for the prevention, detection and investigation of criminal offences and for identification of missing persons and unidentified human remains ~~investigation of criminal offences.~~

Processing of data kept in those ~~files~~databases, under this Regulation, shall be carried out in accordance with this Regulation, in compliance with the national law of the Member States applicable to the processing of those data.

2. Member States shall ensure the availability of DNA reference data from their national DNA ~~analysis file~~databases as referred to in paragraph 1.

DNA reference data shall not contain any personal identification data from which an individual can be directly identified.

DNA reference data which is not attributed to any individual (unidentified DNA profiles) shall be recognisable as such.

Article 6

Automated searching of DNA profiles

1. Member States shall allow national contact points referred to in Article 29 and Europol access to the DNA reference data in their DNA ~~analysis files~~data bases, to conduct automated searches by comparing DNA profiles for the prevention, detection and investigation of criminal offences and for identification of missing persons and unidentified human remains~~investigation of criminal offences.~~

Searches ~~may~~ shall be conducted only in individual cases and in compliance with the national law of the requesting Member State.

2. Should an automated search show that a supplied DNA profile matches DNA profiles entered in the requested Member State's searched file, the national contact point of the requesting Member State shall receive in an automated way the DNA reference data with which a match has been found.

If there is no match, the requesting Member State shall be notified about it in an automated manner.

Commented [SR(7]: Could be deleted. Meanwhile each EU MS have such national DNA database.

Commented [SR(8]: Outdated definition. There will be never checked "files" furthermore with automated searches databases with there stored DNA (forensic) profiles

Commented [SR(9]: Each EU MS DNA database are established for all those mentioned reasons. Not one EU MS LEA have establische DNA or other biometric databases only for investigation reasons.

Commented [SR(10]: Each DNA profile must hold a profile reference number or a stain profile number otherwise no identification of case / person linked to this profile will be possible. What should be not available with Prüm 1step ist only personal data such as names

Commented [SR(11]: Each EU MS DNA database are established for all those mentioned reasons. Not one EU MS LEA have establische DNA or other biometric databases only for investigation reasons.

Commented [SR(12]: It is very important, that the Prüm DNA searches will be processed in same manner than it works now. This means that each new loaded open DNA stain profile and each new loaded reference profile has to be searched after new loading against all EU MS DNA databases. This workflow is fixed also in the present Prüm regulation and will be fulfilled from the EU MS. This workflow creates the success of Prüm DNA cooperation. By changing the present Prüm Decision Legislation this success with clarification of ten thousends of open crimes and location of wandet criminals whould be destroid immediate. This article must therefore also contain the Article of Prüm Decision 2018 616, Article 9 and 10 which regulates presently the Prüm DNA workflow. See also detailed descripton of EU MS focus groups reports.

3. The national contact points of the ~~requesting~~ Member State which have analysed the unidentified DNA profile shall confirm a match of DNA profiles data with DNA reference data or DNA unidentified DNA profiles held by the requested Member State following the automated supply of the DNA reference data required for confirming a match. Only if such forensic confirmation result in a hit follow up data should be exchanged between concerned MS (Prüm 2nd step data exchange).

Article X

Transmission Procedure for automated searching of unidentified DNA profiles and of DNA reference data in line with Article 6

Prüm DNA Worflow Articles 9 + 10 of Prüm Decision 2008/616 must be added here, otherwise the Prüm DNA cooperation could not work furthermore in efficient manner.

Commented [SR(13]: It seems there is a strong misunderstanding how Prüm workflow works. Prüm searches conduct matches seen on both sides (searching and searched partner states) Usually only the MS which held the DNA stain profile have interest for investigation start. Also only the DNA holder state could seriously made a forensic hit confirmation because he need therefore the DNA raw data (Electropherogram). Only stain data could have also limited data quality because of biological reasons (e.g. destroing of some DNA values on specific locus = partial DNA profiles. Therefore a check only of such partial values are not sufficient enough for hit confirmation in a lot of cases. The owner country of such stains is very often the (passive) searched MS and not the (active) searching country which have to transmitte with automated trigger searches of each new loaded open stain or with realy each new loaded reference profile the databases of all EU MS. See remarks above to article 6 and missing articles 9 + 10 of Prüm Decision 2008/616.

Article 7

Automated comparison of unidentified DNA profiles

1. Member States may, via their national contact points, compare the DNA profiles of their unidentified DNA profiles with all DNA profiles from other national DNA analysis files for the prevention, detection and investigation of criminal offences and for identification of missing persons and unidentified human remains~~investigation of criminal offences~~. Profiles shall be supplied and compared in an automated manner.

Commented [SR(14]: Each EU MS DNA database are established for all those mentioned reasons. Not one EU MS LEA have established DNA or other biometric databases only for investigation reasons.

2. Should a requested Member State, as a result of the comparison referred to in paragraph 1, find that any DNA profiles supplied match any of those in its DNA analysis files, it shall, without delay, supply the national contact point of the requesting Member State with the DNA reference data with which a match has been found.

3. The confirmation of a match of DNA profiles with DNA reference data held by the requested Member State shall be carried out by the national contact point of the requesting Member State following the automated supply of the DNA reference data required for confirming a match.

Article 8

Reporting about DNA ~~analysis files~~data bases

Each Member State shall inform the Commission and eu-LISA and the MS about the content of data types of the national DNA ~~analysis files~~data base, to which Articles 5 to 7 apply, in accordance with Article 73.

Article 9

Reference numbers for DNA profiles

The reference numbers for DNA profiles shall be the combination of the following:

(a) a reference number allowing Member States, in case of a match, to retrieve further data and other information in their databases referred to in Article 5 in order to supply it to one, several or all of the other Member States in accordance with Articles 47 and 48;

(b) a code to indicate the Member State which holds the DNA profile;

(c) a code to indicate the type of DNA profile (reference DNA profiles, ~~or~~ unidentified DNA profiles, missing person or unknown human remains).

Article 10

Principles of DNA reference data exchange

1. Appropriate measures shall be taken to ensure confidentiality and integrity for DNA reference data being sent to other Member States, including their encryption.

2. 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 those measures comply with the relevant international standards and EU Quality Standards for DNA data exchange.

3. The Commission shall adopt implementing acts to specify the relevant international standards that ~~are to~~must be used by Member States for DNA reference data exchange. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 76(2).

4. Those implementing acts shall also define technical and forensic rules for requests and answers regarding DNA profile searches

~~*Article 11*~~

~~**Rules for requests and answers regarding DNA profiles**~~

~~1. A request for an automated search or comparison shall include only the following information:~~

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

~~(b) the date, time and indication number of the request;~~

~~(c) DNA profiles and their reference numbers referred to in Article 9;~~

~~(d) the types of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles).~~

~~2. The answer to the request referred to in paragraph 1 shall contain only the following information:~~

~~(a) an indication as to whether there were one or more matches or no matches ;~~

~~(b) the date, time and indication number of the request;~~

~~(c) the date, time and indication number of the answer;~~

~~(d) the codes of the requesting and requested Member States;~~

Commented [SR(15]: With the present definition of the Article 48 Prüm could never work. Each Prüm communication will be never done via Europol "Siena" channel, which is only a protocol system from Europol for classical information exchange between Europol National Contact Points and Europol Den Hague. This technology is not able to process automated data exchange between biometric databases and could not even accepted for an exclusive "classical" non structured information exchange, for which Siena could be used only. Prüm exchange works with specific data protocols and encryption technology fully separated within the EU TESTA network. Also Siena is only one of this numerous TESTA network applications but for fully differend tasks.

Commented [SR(16]: See EU Framework Decision for Forensic Service Provider

Commented [SR(17]: Article 11 (and also identical Articels to other data types such as e.g. dactyloscopic data should be deleted from the regulation. Those data are technical data. They will be not the same data as in the present (old and technicaly outdatet) Prüm data exchange solution. Numerous of additional technical, forensic and quality data must be added in Prüm II solution which will be also not a SMTP solution furthermore a HTTP solution in line with ISO standards. Such data must be defined in implementing acts because the forensic and technical standards must be also hold in future "state of art" and will be defined also in the next phase from EU MS experts which will link their national biometric databases on newest standards.

Commented [SR(18]:

Commented [SR(19]:

~~(e) the reference numbers of the DNA profiles from the requesting and requested Member States;~~

~~(f) the type of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles);~~

~~(g) the matching DNA profiles.~~

~~3. Automated notification of a match shall only be provided if the automated search or comparison has resulted in a match of a minimum number of loci. The Commission shall adopt implementing acts to specify this minimum number of loci, in accordance with the procedure referred to in Article 76(2).~~

~~4. Where a search or comparison with unidentified DNA profiles results in a match, each requested Member State with matching data may insert a marking in its national database indicating that there has been a match for that DNA profile following another Member State's search or comparison.~~

~~5. Member States shall ensure that requests are consistent with declarations sent pursuant to Article 8. Those declarations shall be reproduced in the practical handbook referred to in Article 78.~~

SECTION 2

Dactyloscopic data

Article 12

Dactyloscopic reference data

1. Member States shall ensure the availability of dactyloscopic reference data from the file for the national automated fingerprint identification systems established for the prevention, detection and investigation of criminal offences.

2. Dactyloscopic reference data shall not contain any data from which an individual can be directly identified.

3. Dactyloscopic reference data which is not attributed to any individual (unidentified dactyloscopic data) shall be recognisable as such.

Article 13

Automated searching of dactyloscopic data

1. For the prevention, detection and investigation of criminal offences, Member States shall allow national contact points of other Member States and Europol access to the dactyloscopic reference data in the automated fingerprint identification systems which they have established for that purpose, to conduct automated searches by comparing dactyloscopic reference data.

Searches may be conducted only in individual cases and in compliance with the national law of the requesting Member State.

2. The national contact point of the requesting Member State shall confirm a match of dactyloscopic data with dactyloscopic reference data held by the requested Member State following the automated supply of the dactyloscopic reference data required for confirming a match.

Article 14

Reference numbers for dactyloscopic data

The reference numbers for dactyloscopic data shall be the combination of the following:

(a) a reference number allowing Member States, in the case of a match, to retrieve further data and other information in their databases referred to in Article 12 in order to supply it to one, several or all of the other Member States in accordance with Articles 47 and 48;

(b) a code to indicate the Member State which holds the dactyloscopic data.

Article 15

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 in accordance with ~~a uniform data format~~international standards. The Commission shall adopt implementing acts to specify the uniform data format in accordance with the procedure referred to in Article 76(2).

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.

3. Member States shall take appropriate measures to ensure the confidentiality and integrity of dactyloscopic data being sent to other Member States, including their encryption.

4. The Commission shall adopt implementing acts to specify the relevant existing international standards for dactyloscopic data exchange that are to be used by Member States. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 76(2).

Article 16

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 to ensure national system readiness and avoid overloading of national systems. Such search capacities have to be agreed between the MS bilateraly and could be changed after common agreements between concerned MS at any time and if necessary in case of urgency also temporarly after request of MS.

Member States shall inform the Commission and eu-LISA and the MS in accordance with Article 79(8) and (10) about their maximum search capacities per day for dactyloscopic data of identified persons and for dactyloscopic data of persons not yet identified so far not only temporarly extentions was agreed in case of urgency events~~.~~

2. The Commission shall adopt implementing acts to specify the maximum numbers of candidates accepted for comparison per transmission in accordance with the procedure referred to in Article 76(2).

3. Those implementing acts shall also define technical and forensic rules for requests and answers regarding dactyloscopic data

Commented [SR(20]: With the present definition of the Article 48 Prüm could never work. Each Prüm communication will be never done via Europol "Siena" channel, which is only a protocol system from Europol for classical information exchange between Europol National Contact Points and Europol Den Hague. This technology is not able to process automated data exchange between biometric databases and could not even accepted for an exclusive "classical" non structured information exchange, for which Siena could be used only. Prüm exchange works with specific data protocols and encryption technology fully separated within the EU TESTA network. Also Siena is only one of this numerous TESTA network applications but for fully differend tasks.

Commented [SR(21]: The whole Prüm exchange could work only by using international standards implemented in biometric systems. Such standards are ISO and NIST standards. It is unclear what should be a "uniform" standard. EU could not create new or other "uniform" standards which international developed biometric systems allow to communicate fully automated together. In such Implementing acts the MS have only to agree which standards version have to be used. It is also very important the the present used Prüm standards must work retrograd as long as not all EU MS have implemented on national side new biometric systems which will take in minimum 10 years with routinely (and very cost intensive) updates of such systems to new technologies.

~~*Article 17*~~

~~**Rules for requests and answers regarding dactyloscopic data**~~

~~1. A request for an automated search shall include only the following information:~~

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

~~(b) the date, time and indication number of the request;~~

~~(c) the dactyloscopic data and their reference numbers referred to in Article 14.~~

~~2. The answer to the request referred to in paragraph 1 shall contain only the following information:~~

~~(a) an indication as to whether there were one or more matches or no matches;~~

~~(b) the date, time and indication number of the request;~~

~~(c) the date, time and indication number of the answer;~~

~~(d) the codes of the requesting and requested Member States;~~

~~(e) the reference numbers of the dactyloscopic data from the requesting and requested Member States;~~

~~(f) the matching dactyloscopic data.~~

Commented [SR(22]: See remarks to Article 11 = same situation and background

SECTION 3

Vehicle registration data and Driving licence data

Article 18

Automated searching of vehicle registration data and driving licence data

1. For the prevention, detection and investigation of criminal offences, Member States shall allow national contact points of other Member States and Europol access to the following national vehicle registration data and driving licence data, to conduct automated searches in individual cases:

(a) data relating to owners or operators;

(b) data relating to vehicles.

© data relating driving licences including face images of driving licence owner if available in national driving licence database

2. Searches may be conducted ~~only~~ with a full chassis number, ~~or~~ a full registration number, driving licence numbers or with personal data (Name, date of birth) of persons.

3. Searches may be conducted only in compliance with the national law of the requesting Member State.

Commented [SR(23]: It is of greath importance that also a further development of the present Prüm VRD solution will be established. The legal preconditions exists in TFEU for this area and will have greath impact for correct identification of international acting criminal offenders and terrorist suspects. This was also not only the order and mandate of the Council in 2018 furthermore follows the very successful and good work and report of the EU MS in which this needed functionalities are explained in detail. See also remarks above to this existing Eucaris funtions. Queries of national driving licence databases and also Vehicle registration databases not only with number of plates, VIN or driving licence documents furthermore also with names of persons are in all EU MS a needed and proved standard investigation tool for criminal police. This functionalities will not only have very high operative benefit furthermore are also necessary within EU MS unter the principle of availability in LEA cooperation.

Article 19

Principles of automated searching of vehicle registration data and driving licence data

1. For automated searching of vehicle registration data Member States shall use the European Vehicle and Driving Licence Information System (Eucaris).

2. The information exchanged via Eucaris shall be transmitted in encrypted form.

3. The Commission shall adopt implementing acts to specify the data elements of the vehicle registration data to be exchanged. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 76(2).

4. Those implementing acts shall also define technical and forensic rules for requests and answers regarding dactyloscopic data

~~*Article 20*~~

Commented [SR(24]: See remarks to Article 11 + 19

~~**Keeping of logs**~~

~~1. Each Member State shall keep logs of queries that the staff of its authorities duly authorised to exchange vehicle registration data make as well as logs of queries requested by other Member States. Europol shall keep logs of queries that its duly authorised staff make.~~

~~Each Member State and Europol shall keep logs of all data processing operations concerning vehicle registration data. Those logs shall include the following:~~

~~(a) the Member State or Union agency launching the request for a query;~~

~~(b) the date and time of the request;~~

~~(c) the date and time of the answer;~~

~~(d) the national databases to which a request for a query was sent;~~

~~(e) the national databases that provided a positive answer.~~

~~2. The logs referred to in paragraph 1 may be used only for the collection of statistics and data protection monitoring, including checking the admissibility of a query and the lawfulness of data processing, and for ensuring data security and integrity.~~

~~These logs shall be protected by appropriate measures against unauthorised access and erased one year after their creation. If, however, they are required for monitoring procedures that have already begun, they shall be erased once the monitoring procedures no longer require the logs.~~

~~3. For the purposes of data protection monitoring, including checking the admissibility of a query and the lawfulness of data processing, the data controllers shall have access to the logs for self-monitoring as referred to in Article 56.~~

SECTION 4

Facial images

Article 21

Facial images

1. Member States shall ensure the availability of facial images from their national databases established for the prevention, detection and investigation of criminal offences. Those data shall only include facial images and the reference number referred to in Article 23, and shall indicate whether the facial images are attributed to an individual or not.

Member States shall not make available in this context any data from which an individual can be directly identified.

2. Facial images which are not attributed to any individual (unidentified facial images) must be recognisable as such.

Article 22

Automated searching of facial images

1. For the prevention, detection and investigation of criminal offences, Member States shall allow national contact points of other Member States and Europol access to facial images stored in their national databases, to conduct automated searches.

Searches may be conducted only in individual cases and in compliance with the national law of the requesting Member State.

2. The requesting Member State shall receive a list composed of matches concerning likely candidates. That Member State shall review the list to determine the existence of a confirmed match.

3. A minimum quality standard shall be established to allow for search and comparison of facial images. The Commission shall adopt implementing acts to specify that minimum quality standard. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 76(2).

Article 23

Reference numbers for facial images

The reference numbers for facial images shall be the combination of the following:

(a) a reference number allowing Member States, in case of a match, to retrieve further data and other information in their databases referred to in Article 21 in order to supply it to one, several or all of the other Member States in accordance with Articles 47 and 48;

(b) a code to indicate the Member State which holds the facial images.

Commented [SR(25]: See remarks above. Such Prüm solution could never work via "Siena" furthermore only via "TESTA"

Article 24

Rules for requests and answers regarding facial images

1. A request for an automated search shall include only the following information:

(a) the code of the requesting Member State;

Article 29

National contact points

Each Member State shall designate a national contact points.

The national contact points shall be responsible for supplying the data referred to in Articles 6, 7, 13, 18, 22 ~~and~~ , 26 and 47.

Article 30

Implementing measures

The Commission shall adopt implementing acts to specify the technical arrangements for the procedures set out in Articles 6, 7, 13, 18, 22 and 26. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 76(2).

Article 31

Technical specifications

Member States and Europol shall observe common technical specifications in connection with all requests and answers related to searches and comparisons of DNA profiles, dactyloscopic data, vehicle registration data, facial images and police records. The Commission shall adopt implementing acts to specify these technical specifications in accordance with the procedure referred to in Article 76(2).

Article 32

Availability of automated data exchange at national level

1. Member States shall take all necessary measures to ensure that automated searching or comparison of DNA profiles, dactyloscopic data, vehicle registration data, facial images and police records is possible 24 hours a day and seven days a week.

2. National contact points shall immediately inform each other, the Commission, Europol and eu-LISA of the technical fault causing unavailability of the automated data exchange.

National contact points shall agree on temporary alternative information exchange arrangements in accordance with the applicable Union law and national legislation.

3. National contact points shall re-establish the automated data exchange without delay.

Article 33

Justification for the processing of data

1. Each Member State shall keep a justification of the queries that its competent authorities make.

Europol shall keep a justification of the queries it makes.

2. The justification referred to in paragraph 1 shall include:

Commented [SR(26]: There is not only one NCPs. Prüm works in each data category with one NCPs for first step and additionally in future with (usually fully different (2nd step NCPs) which could be often also differend authorithies in line with data types (e.g. in all Benelux Countries also 2nd step NCPs are in Dactydata and Face Recognition data will be the National Criminal Police NCP but in DNA cooperation a National legal cooperation Center of Justice Authority. It is up to notify such NCPs in line with (different) national legislation and organisational concept. But import is the binding notification of such NCPs, which must also fixed for Prüm 2nd step exchange in this Prüm II Regulation for better functioning. Please see also here the very detailed recommentations of the EU MS focus group experts in all data categories.

Commented [SR(27]: There must be defined additional NCPs in future. First NCPS for automated Prüm 2nd step Core data exchange and than also additionaly unstructured Prüm 3rd step data exchange which must not binding be the same authority than Prüm 2nd step NCP. Present defined Prüm 2nd step exchange of Core data will be commendet after next IXIM event. In present definition it have not any possible benefit furthermore will be a only a step backwards because of not sufficient data content and not sufficient workflow definition. Please see also here the very detailed recommendations of the EU MS focus groups experts.

confirmation of this match by the requesting Member State, the requested Member State shall return a set of core data via the router within 24 hours. That set of core data, if available, shall contain the following data:

(a) first name(s);

(b) family name(s);

(c) date of birth;

(d) nationality or nationalities;

(e) place and country of birth;

(f) gender.

Article 48

Use of ~~SIENA~~TESTA

Any exchange which is not explicitly provided for in this Regulation between Member States' competent authorities or with Europol, at any stage of one of the procedures under this Regulation, shall take place via ~~SIENA~~EU Testa Network.

CHAPTER 5

EUROPOL

Article 49

Access by Member States to third country-sourced biometric data stored by Europol

1. Member States shall, in accordance with Regulation (EU) 2016/794, have access to, and be able to search via the router, biometric data which has been provided to Europol by third countries for the purposes of Article 18(2), points (a), (b) and (c), of Regulation (EU) 2016/794.

BELGIUM

BLOCK 1 : Initial general provisions Art. 1- 4 (except 4.16) and Art. 67

Art 1 : Subject matter :

- The formulation differs from the one that was used in the Law Enforcement Directive (2016/680) in which the following terminology is used: "*Competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties*". We would like to know whether this was changed intentionally and for what reason? We do understand that the purpose of the information exchange in Prüm II is primarily of police interest, but in the Belgian situation, other services play a crucial role too, such as (for DNA for example) the Federal Prosecutor's Office and the National Institute for Criminalistics and Criminology (so judicial authorities).

Art 2 : Purpose :

- Regarding the previous comment (Art 1). As it has been explained by the COM during the meeting the "competent authority" is to be defined by the MS and the subjacent idea by COM is to focalize on the previous Prüm regulation. However this leads to another problem regarding Art 2.

  BE would like to know why the first sentence is this limited to Chapter 5? The old Prüm Decision referred to the entire Title VI of the old TEU which is a lot broader than just this Chapter 5.By enlarging this to the entire Title V of Part III of the TFEU, we might find solutions for the problem we identified with regard to article 1 (e.g. on judicial authorities and MP and UHR outside of the criminal scope (see next comment)). Would it be possible to explain why the Commission doesn't refer to title V in its entirety and if this option has been considered by the Commission?

- With regard to the last sentence of Article 2 on the purpose of Prüm II for "missing persons" and "unidentified human remains", we are not convinced by the explanation provided by the Council Legal Service. According the CLS, information exchange would still be possible under Prüm II if there is a doubt that the missing persons and unidentified human remains are, somehow, related to the prevention, detection and investigation of criminal offences.

    - Firstly, we consider the concepts of "doubt" and "absence of doubt" as substantially vague. We think that it is impossible to have a situation where there is (preliminarily to further examinations) absolutely "no doubt" that unidentified human remains are not related to a criminal context.

    - Secondly, considering the preparatory work and the initial idea behind the drafting of this proposition, BE is thwarted by the fact that the option to use Prüm in other contexts than "prevention, detection and investigation of criminal offences" is not included. This was clearly mentioned during the working group in preparation of this new proposal.

- Moreover, we would like to stress that, the actual phrasing "*The purpose of Prüm II shall also be to allow for the search for missing persons and unidentified human remains by authorities responsible for the prevention, detection and investigation of criminal offences.*" can lead to misinterpretation. One could read this sentence as "not" reducing the scope to "the prevention, detection and investigation of criminal offences" but reducing the use/scope to "authorities responsible for […]". Nevertheless, in BE, these authorities (the police for instance) are allowed to search for missing persons and unidentified human remains beyond the scope of the prevention, detection and investigation of criminal offences.

- The phrase: "*to allow for*" in paragraph 2 of article 2, is rather strange. Knowing that in the current situation, it is possible to try to identify missing persons and unidentified human remains. Prüm II should allow exchanging certain data in the given context with the aforementioned purposes. In other words, in this sentence of art 2, we consider that an equivalent for "to step up cross-border cooperation" is missing/is needed.

Art 3 : Scope :

- Regarding the phrasing of the first sentence, BE does not understand what this could mean. Once we understand more clearly what COM is trying to express here, we will think about another drafting of this sentence.

Art 4 : Definitions :

- Definition (9) : “individual case”. BE would like to know if this definition considers single investigation file regardless of the number of persons that is referred to? So, when a Member State is conducting a large scale DNA investigation in light of a murder case, with the intention to ask for a DNA sample of several men in a certain region, is this then considered being an “individual case” as mentioned in definition 9 ? Indeed, how does it work with linked investigations, or divided investigations from the same “main” file ?

- Definition (11) : “biometric data”. In the LED (2016/680) and the GDPR (2016/679) instruments, DNA is split off from biometrical data and is called ‘genetical data’. BE would like to know if this discrepancy could be explained?

- Definition (12) : “match”. In the new SIS (2018/1862) instruments there is a distinction between ‘match’ and ‘hit’. We would like to understand if the terminology and the meaning of these terms are equal to those of the new SIS instruments? Otherwise, this could lead to a lot of misunderstandings.

- Definition (21) : “significant incident’. BE would like to know if this definition is the same as “personal data breach” used in the LED (2016/680). If it is, we would like to know the reasons to not use the same terminology.

Art 67 : Amendments to Decisions 2008/615/JHA and 2008/616/JHA :

- §1 et §2 : BE would like to propose this phrasing of the first sentence : “ *[…] ~~from the date of application of the provisions of this Regulation related to the router as set out in Article 74~~ From the date mentioned in article 74 paragraph 1*”.

BLOCK 2 : Categories of legacy data

Art. 5-20 and Art. 29-34

Art 5 : Establishment of national DNA analysis files :

- Concerning the scope mentioned in the first sentence of §1 that mentioned *"[…] for the investigation of criminal offences*". We would appreciate it if we could receive more justifications (besides the ones given during the meeting) on the exclusion of "prevention and detection of criminal offences" and "identifying MP and UHR".

Art 6 : Automated searching of DNA profiles :

- Concerning the information exchange process, we would like to ask a written answer to the following questions; who has the final right/decision to confirm a match, the requested member state or the requesting member state ? Does the requested MS always have the right to not validate a match, even after that the requesting MS confirmed the match? Can the requested MS refuse to send the core data (when a DNA reference profile is concerned) or information on the judicial case (when a trace is involved) if they decide that the match does not comply with their own rules ? The validation procedure sometimes differs from one MS to another. Indeed, for some MS, DNA is considered as a piece of evidence for the prosecution, while it could be considered as "investigative information" for police investigators in other MS.

- Concerning EUROPOL and its equivalence to the national laws that regulate the MS searches we would like to know the following. It is clear that searches must be carried out in accordance with the legislation of the requesting member state (this is also mentioned in the other sections). Yet, we would suggest clarifying the correspondence when it concerns a search conducted by Europol. If the "Europol regulation" is this equivalence, it needs to be specified.

Art 7 : Automated comparison of unidentified DNA profiles :

- We do not understand why Europol is not mentioned in this article ? Would it be possible to give us explanations on that point ?

Art 8 : Reporting about DNA analysis files :

- When this article states, « *[…] in accordance with article 73* », it does not provide any information on what needs to be "informed" nor on the procedure that needs to be respected to "*notify EU-Lisa and the commission*". We recommend developing this information/ notification procedure.

Art 11 : Rules for requests and answers regarding DNA profiles :

- §2 (e) – When it is referred to "*reference number of […] requested Member States*", we would like to understand if it is referred to all the reference numbers of every requested MS ? Or does it only refer to the MS that was/ were in the request ?

- §5 – By mentioning that "*MS shall ensure that requests are consistent with declarations sent […]*". We do not fully understand what "consistent with declaration" means and we would appreciate some clarifications on this. What does it entail precisely ?

Art 12 : Dactyloscopic reference data :

- Even if the COM explained (orally) that more details will follow on the procedure that will be established in place of the actual two steps process (as currently depicted in the directives 2008/615 and 2008/616), we would like to express our (written) concerns on this point and reaffirm that we are waiting for more in-depth details.

Art 18 : Automated searching of vehicle registration data :

- §2 - Paragraph 2 states that searches can only be carried out based on "*a full chassis number or a full registration number*". Could we ask for an explanation on what it means precisely ? Does this mean that it will only be possible to carry out searches on the basis of chassis numbers of 17 characters? We would like to know why it will not be possible to search on the basis of chassis numbers with 4, 7, 9, 11 characters (like it is the case for old/ collector vehicles).

  Moreover, in our police general national database, we are able to search for numberplates and vehicle identification numbers that are incomplete. We would propose to indicate a minimum number of characters, in order to avoid misuse.

Art 19 : Principles of automated searching of vehicle registration data :

- BE would like to express its keen interest in developing an alternative/ possibility for sharing driving licenses' data, within this instrument. We are not fully satisfied by the explanations given during the first and second meetings, we would appreciate obtaining some more extensive clarifications on the proportionality and legal problems expressed during the WP IXIM of the 20th of January.

Art 20 : Keeping of logs :

- §1 - Concerning this article and more precisely the first sentence of the §1 : "*Each Member State shall keep logs of queries that the staff of its authorities duly authorised to exchange vehicle registration data make as well as logs of queries requested by other Member States*". We would like to ask why this could not be a general principle applicable to all forms of data and not only to vehicle registration data? In any case, it is a general principle under the LED (2016/680) and under Chapter IX of Regulation 2018/1725, so this requirement already exists, for all data categories. So technically, the whole article can be deleted. Or we could also advocate moving it to the end of the text as a general principle.

- § 2 - Concerning the principle expressed in §2 asking MS to erase their logs *"[…] one year after their creation […]"*, we consider this period of time as substantially too short with regard to data protection and GDPR (e.g. the regulation 2018/1725, Art. 88, foresees 3 years). Accordingly, we would propose to extend this period to 5 years.

  We would also like to know if there is a procedure planned regarding the deletion and the erasure of those data/ logs. Will it be planned to verify the suppression of those logs and, if yes, how would/ should it be done?

- § 3 – Concerning the data controllers and the logs they have access to, we would appreciate receiving some deeper clarifications. Which data controllers this article is referring to ? Does this paragraph is about all the data controllers of a MS regardless of the fact that several national authorities can provide a data-control service?

Art 32 : Availability of automated data exchange at national level :

- §2 - With regard to the "*technical fault*" in the second paragraph, we would welcome a definition of this term in the text. Moreover, in order to propose a more efficient phrasing, we would advocate writing "any technical fault" instead of "the technical fault".

Art 33: Justification for the processing of data :

- §2 – Amongst the content proposed in paragraph 2 for the justifications (as referred in paragraph 1), we also advocate to include the reasoning on "why certain MS are/is being questioned". This would imply a more detailed overview of the whole process and avoid the systematic transfer of the request to all the MS.

- §3 – Once again and in relation to our comments on Art. 20, we would like to know if the retention period is in line with the general data protection rules. We would like to ask for more clarifications and in-depth analyses on this point.

Art 34 : Use of the universal message format :

- §2 – We would appreciate knowing what exactly is considered "automated". A detailed definition of this word in the sense it is used in this paragraph (and maybe others) would be welcome.

  Concerning the requirement to use the UMF standard, we think that more detailed clarifications would be useful. We would like to know what exactly the UMF standard is meant to encompass (which exchanges ? which contexts ? etc.).

CZECHIA

Block 1

Article 1

second sub-paragraph

CZ proposes to add ”certain driving licence data“ after “certain vehicle registration data“.

- *Scope of the Regulation should include vehicle registration data. CZ finds arguments about „innocent persons“ unconvincing, as the search would be targeted to persons law enforcement is legitimately dealing with pursuant to the legal basis of the Regulation.*

Article 3

CZ proposes to add ”certain driving licence data“ after ”certain vehicle registration data“.

- *See Art. 1.*

We propose to add “created in accordance with national law” after “national databases“.

- *Given the legal nature of Regulation, it is necessary to affirm that the underlying databases are governed by national law rather than created because of the Regulation.*

Article 4

18 – consideration should be given to limiting this definition to „operational“ data.

Europol processes both “operational” and “administrative“ data and even those are, albeit to a limited extent, governed by Europol Regulation (see e.g. Art. 27a(4) of draft amendment to Europol Regulation).

21 – 24 – These definitions should be updated on the basis of current text of NIS 2 Directive.

25 – consideration should be given to defining “gender“ as “biological gender“.

- Articles 25, 43, 47 and 50 use the term “gender“. This term may be perceived to be connected to sexual life or orientation, which fall among the (sensitive) special categories of personal data. Explicit definition to focus the definition to data useful for law enforcement identification may reduce data protection concerns.

Block 2

Article 5(1)

The term “detection“ should be added before the term “investigation“.

While CZ understands the need to carefully calibrate intrusiveness of the Regulation, CZ notes that the term “detection” does not appear in the Prüm decisions at all. It is a new distinction that has been introduced later. Thus, omitting this term here will unduly restrict the interpretation of the term “investigation“.

Article 6(1)

The same as in Article 5(1).

Article 7

Paragraph 1 – the words “by mutual consent” should be added after the word “may”.

- Since „comparing“ will be initiated by the „searching“ Member State, it is important to explicitly require mutual consent of both Member States involved; word „may“ is not enough.

Article 10(3)

The words “widely accepted” should be added after or instead of the word “relevant”.

- Our aim is to support compatibility of EU specifications and world standards.

Article 11(4)

It would be useful to insert the words “(reference number)” after the word “a marking”.

- It should be clear that the requested Member State is able to record full reference number rather than only which Member State has a matching profile.

Article 15(4)

Instead of the word “existing”, the words “widely accepted” should be added after or instead of the word “relevant“.

- Our aim is to support compatibility of EU specifications and world standards without hindering innovation.

New Article 16a

Equivalent of Art. 8 should be introduced to govern access to particular national dactyloscopic databases.

- *The difference between the Sections 1 and 2 is hard to justify.*

Article 18(1)(b)

After „owners“, CZ wishes to include „holders“.

- To prevent restrictive interpretations.

Article 20(2)

CZ requests that words “and for criminal proceedings” are added after “data security and integrity”.

- Practitioners need the logs to coordinate investigations into cross-border vehicle crime, because logs will identify law enforcement counterpart in particular cases. Usage of logs for criminal proceedings is explicitly allowed by Art. 25(2) of LED.

Second subparagraph:

The first sentence should be changed to require two years of log storage period.

- *Longer storage period will facilitate due supervision of protection of personal data.*

Article 29

The first sentence should allow designation of “one or more national contact points”.

- *Some Member States need to retain existing flexibility, as not all databases are run by the same national authority. In Prüm I, contact points are designated separately for each type of information exchanged.*

Article 32

All three paragraphs should be limited to “availability of national databases for automated searches”. This phrase should replace the words:

- “automated searching” in para 1,

- “automated data exchange” in para 2,

- “automated data exchange” in para 3.

- *Hybrid IT architecture should be respected. Elements such as router will not be managed by Member State, who cannot address their malfunction. Distribution of responsibility according to Art. 41 and 63-66 should be respected.*

Article 33

CZ prefers to use different term than “justification”, such as “logs” or “documentation”.

Paragraph 2:

Documentation should include “identification of competent authority/agency”.

Letters (b), (c) should be deleted.

– Art. 33(2)(b) is misleading, as the notion of „suspect“ has quite different meaning in various Member States and „perpetrator“ is term of substantive criminal law rather than procedural criminal law. (In CZ, more terms would be needed to cover various stages of criminal procedure: suspect, person charged, person accused, and convict.) Moreover, query may concern a victim or a witness as well.

- Art. 33(2)(c) is misleading, as the law enforcement body may know the person that will be identified but not its dactyloscopic data or DNA profile. In other words, only after the search the law enforcement may realize that data are related to a known person.

GERMANY

4. BUDGETARY IMPLICATIONS

This legislative initiative would have an impact on the budget and staff needs of eu-LISA and Europol.

For eu-LISA, it is estimated that an additional budget of around EUR 16 million and around 10 additional posts would be needed for the overall MFF period to ensure that eu-LISA has the necessary resources to enforce the tasks attributed to the Agency in this proposed Regulation. The budget allocated to eu-LISA will be offset against the BMVI.

For Europol, it is estimated that an additional budget of around EUR 7 million and around 5 additional posts would be needed for the overall MFF period to ensure that Europol has the necessary resources to enforce the tasks attributed to the Agency in this proposed Regulation. The budget allocated to Europol will be offset against the ISF.

Commented [RMD1]: We welcome the fact that the proposed additional funding for Europol and eu-LISA will be redeployed from existing programmes.
We take note that following the COM proposal, the tasks attributed to Europol in this proposed Regulation shall be covered in part by additional staff resources (5 posts) and in part by staff resources foreseen for Europol in the Europol Regulation recast. With regard to the latter, we would like to ask the Commission for more detailed information on Europol's resource planning. In particular, we would like to know to what extent staff resources allocated to Europol under the ER recast will be available for carrying out tasks attributed to Europol under this proposed Regulation.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will ensure that the necessary arrangements are in place to monitor the functioning of the measures proposed and evaluate them against the main policy objectives. Two years after the new functionalities are put in place and operating, and every two years thereafter, Union Agencies should submit to the European Parliament, the Council and the Commission a report on the technical functioning of the new proposed measures. In addition, three years after the new functionalities are put in place and operating, and every four years thereafter, the Commission should produce an overall evaluation of the measures, including on any direct or indirect impact on fundamental rights. It should examine results achieved against objectives and assess the continuing validity of the underlying rationale and any implications for future options. The Commission should submit the evaluation reports to the European Parliament and the Council.

- **Detailed explanation of the specific provisions of the proposal**

Chapter 1 sets out the general provisions for this Regulation with its subject matter, purpose and scope. It provides a list of definitions and recalls that the processing of personal data for the purposes of this Regulation shall respect the principle of non-discrimination and other fundamental rights.

Chapter 2 sets out the provisions for the exchange of the categories of data under this Regulation, namely the exchange of DNA profiles, dactyloscopic data, vehicle registration data, facial images and police records. The principles for the exchange, the automated search of data, the rules for requests and answers are detailed in a separate section for each category of data respectively. Chapter 2 also contains common provisions for the exchange of data, the setting up of national contact points and implementing measure.

Chapter 3 sets out the details for the new (technical) architecture for the exchange of data. The first section of this chapter includes provisions describing the central router, the use of the router and the launching of queries. Implementing acts will be needed to specify the technical procedures for these queries. This section also includes provisions on the interoperability between the router and the Common Identity Repository for the purposes of law enforcement access, the keeping of logs of all data processing operations in the router, the quality check and the notification procedures in case of technical impossibility to use the router. A second section provides details on the use of the European Police Records Index System (EPRIS) for the exchange of police records. This section also includes

2021/0410 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on automated data exchange for police cooperation ("Prüm II"), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2019/818 of the European Parliament and of the Council

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), Article 87(2), point (a), and Article 88(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[2],

Having regard to the opinion of the Committee of the Regions[3],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Union has set itself the objective of offering its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured. That objective should be achieved by means of, among others, appropriate measures to prevent and combat crime, including organised crime and terrorism.

(2) That objective requires that law enforcement authorities exchange data, in an efficient and timely manner, in order to effectively fight crime.

(3) The objective of this Regulation is therefore to improve, streamline and facilitate the exchange of criminal information between Member States' law enforcement authorities, but also with the European Union Agency for Law Enforcement Cooperation established by Regulation (EU) No 2016/794 of the European Parliament and of the Council[4] (Europol) as the Union criminal information hub.

Commented [RMD2]: Since detailed examinations are currently still being carried out, we have a general scrutiny reservation which also refers to the planned extensions compared to the current Prüm legal framework.

[2] OJ C , , p. .
[3] OJ C , , p. .
[4] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

searches of the router and the Common Identity Repository and in order to store reports and statistics of the router on the Common Repository for Reporting and Statistics it is therefore necessary to amend Regulation (EU) 2019/818. Those Regulations should therefore be amended accordingly.

(24) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(25) [In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Regulation.] OR [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

(26) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[12] and delivered an opinion on [XX][13].

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a framework for the exchange of information between authorities responsible for the prevention, detection and investigation of criminal offences (Prüm II).

This Regulation lays down the conditions and procedures for the automated searching of DNA profiles, dactyloscopic data, facial images, police records and certain vehicle registration data and the rules regarding the exchange of core data following a match.

Article 2

Purpose

The purpose of Prüm II shall be to step up cross-border cooperation in matters covered by Part III, Title V, Chapter 5 of the Treaty on the Functioning of the European Union, particularly the exchange

Commented [RMD3]: We would be grateful for an explanation of the word "particularly. It can be assumed that this wording refers to Art. 1 Council Decision 2008/615/JI. The wording also appears appropriate there, because the Council decision also relates to issues other than the exchange of information. However, these are not currently being transferred to the Prüm II proposal. Therefore, the word "particularly" should be replaced by "by facilitating".

[12] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

[13] [OJ C …].

of information between authorities responsible for the prevention, detection and investigation of criminal offences.

The purpose of Prüm II shall also be to allow for the search for missing persons and unidentified human remains by authorities responsible for the prevention, detection and investigation of criminal offences.

Commented [RMD4]: We thank the Commission for the explanations provided in the DXIM meeting. Still, we would appreciate a clarification why there are no more detailed provisions about data exchange for this purpose in the chapters governing each data exchange. According to our initial assessment, detailed provisions concerning the different categories would be necessary, if their processing is supposed to be allowed for this purpose.

Article 3

Scope

This Regulation applies to the national databases used for the automated transfer of the categories of DNA profiles, dactyloscopic data, facial images, police records and certain vehicle registration data.

Commented [RMD5]: For the sake of clarity, the term "to the national databases" should be replaced by "to national databases established in accordance with national law".

Article 4

Definitions

For the purposes of this Regulation, the following definitions apply:

Commented [RMD6]: From the German point of view, a definition of "automated" should be added in order to sharpen the general understanding and to ensure consistent use of the term.

(1) 'loci' means the particular molecular structure at the various DNA locations;

(2) 'DNA profile' means a letter or number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, the particular molecular structure at the various DNA locations;

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

(4) 'DNA reference data' means DNA profile and the reference number referred to in Article 9;

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

(8) 'dactyloscopic reference data' means dactyloscopic data and the reference number referred to in Article 14;

(9) 'individual case' means a single investigation file;

Commented [SJ7]: With regard to this definition, we would like to make a specific scrutiny reservation.

(10) 'facial image' means digital image of the face;

(11) 'biometric data' means DNA profiles, dactyloscopic data or facial images;

(12) 'match' means the existence of a correspondence as a result of an automated comparison between personal data recorded or being recorded in an information system or database;

Commented [RMD8]: We would be grateful for an explanation of the term "information system" and why it is used in addition to "database".

(13) 'candidate' means data with which a match occurred;

(14) 'requesting Member State' means the Member State which is conducting a search through Prüm II;

(15) 'requested Member State' means the Member State in which databases the search is conducted through Prüm II by the requesting Member State;

(16) 'police records' means any information available in the national register or registers recording data of competent authorities, for the prevention, detection and investigation of criminal offences;

(17) 'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;

(18) 'Europol data' means any personal data processed by Europol in accordance with Regulation (EU) 2016/794;

(19) 'supervisory authority' means an independent public authority established by a Member State pursuant to Article 41 of Directive (EU) 2016/680 of the European Parliament and of the Council[14];

(20) 'SIENA' means the secure information exchange network application, managed by Europol, aimed at facilitating the exchange of information between Member States and Europol;

(21) 'significant incident' means any incident unless it has a limited impact and is likely to be already well understood in terms of method or technology;

(22) 'significant cyber threat' means a cyber threat with the intention, opportunity and capability to cause a significant incident;

(23) 'significant vulnerability' means a vulnerability that will likely lead to a significant incident if it is exploited;

(24) 'incident' means an incident within the meaning of Article 4(5) of Directive (EU) …/… of the European Parliament and of the Council[15] [*proposal NIS 2*].

Commented [RMD9]: We would like to ask for an explanation of the term personal data in this context. In the Europol recast, a distinction is made between "operational personal data" and "other personal data". Should the definition be restricted to "operational personal data"?

Commented [RMD10]: In order to take account of the further development of the Europol services SIENA mentioned here, we propose the following future-oriented addition: "SIENA means the secure information exchange network application, managed and further developed by Europol ...".
In addition, we would like to ask for an explanation why there is no provision on SIENA in the Europol Regulation.

Commented [RMD11]: For systematic considerations, it would make sense to define the term "security incident" in Art. 4 (and not in Art. 55).

CHAPTER 2

EXCHANGE OF DATA

Commented [RMD12]: We generally welcome the fact, that certain (technical) details will be specified in Implementing Acts However, it is still necessary to check whether all the necessary specifications are already included. This requires further detailed examination by our experts.

[14] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

[15] Directive (EU) …/… of the European Parliament and of the Council… (OJ..).

SECTION 1

DNA profiles

Article 5

Establishment of national DNA analysis files

1. Member States shall open and keep national DNA analysis files for the investigation of criminal offences.

Processing of data kept in those files, under this Regulation, shall be carried out in accordance with this Regulation, in compliance with the national law of the Member States applicable to the processing of those data.

2. Member States shall ensure the availability of DNA reference data from their national DNA analysis files as referred to in paragraph 1.

DNA reference data shall not contain any data from which an individual can be directly identified.

DNA reference data which is not attributed to any individual (unidentified DNA profiles) shall be recognisable as such.

Article 6

Automated searching of DNA profiles

1. Member States shall allow national contact points referred to in Article 29 and Europol access to the DNA reference data in their DNA analysis files, to conduct automated searches by comparing DNA profiles for the investigation of criminal offences.

Searches may be conducted only in individual cases and in compliance with the national law of the requesting Member State.

2. Should an automated search show that a supplied DNA profile matches DNA profiles entered in the requested Member State's searched file, the national contact point of the requesting Member State shall receive in an automated way the DNA reference data with which a match has been found.

If there is no match, the requesting Member State shall be notified about it in an automated manner.

3. The national contact point of the requesting Member State shall confirm a match of DNA profiles data with DNA reference data held by the requested Member State following the automated supply of the DNA reference data required for confirming a match.

Article 7

Automated comparison of unidentified DNA profiles

1. Member States may, via their national contact points, compare the DNA profiles of their unidentified DNA profiles with all DNA profiles from other national DNA analysis files for the investigation of criminal offences. Profiles shall be supplied and compared in an automated manner.

Commented [RMD13]: Shouldn't it be "any additional data" to clarify? Since DNA data also allow identification.

Commented [SJ14]: The current legal basis for DNA data exchange provides that any DNA profile of a person that is newly registered in a national database and does not match an identical person sample or (only) an unidentified DNA profile in this database is transmitted to the Prüm partner states for matching if certain quality criteria are met. The same applies under the conditions of Article 9 of 2008/616/JHA for unidentified DNA profiles.
From the German point of view, these provisions have not been fully transferred to Article 6 of the draft. Does the Commission foresee that the provisions arising from Article 3 of CD 2008/615/JHA in conjunction with Articles 9 and 10 of CD 2008/616/JHA will be transferred in an implementing act? Or is concretization in Article 6 envisaged here in the follow-up to the meeting of the RAG IXIM on 13 January?

Commented [SJ15]: Paragraph 3 does not correctly reflect the processes currently used in the automated searching of DNA profiles and unnecessarily establishes a procedure that runs against the proven procedures. In the DNA field, the necessity and the will to confirm a hit do not depend solely on the requesting state. Depending on the constellation, a match confirmation may also or only be desired by the requesting state or a match confirmation may not be necessary. The MS should be able to define this according to the individual case. Therefore, the paragraph should be redrafted so that no sole obligation lies with the requesting state.

Commented [RMD16]: According to Art. 63 (j), the confirmation is a manual verification. This should be made clear here.

Commented [RMD17]: We would be grateful for an explanation why this provision (although it is optional ("may")), does not require mutual consent, like Art. 4 Framework Decision 2008/615/JI (cf. there: "by mutual consent").

2. Should a requested Member State, as a result of the comparison referred to in paragraph 1, find that any DNA profiles supplied match any of those in its DNA analysis files, it shall, without delay, supply the national contact point of the requesting Member State with the DNA reference data with which a match has been found.

3. The confirmation of a match of DNA profiles with DNA reference data held by the requested Member State shall be carried out by the national contact point of the requesting Member State following the automated supply of the DNA reference data required for confirming a match.

Commented [SJ18]: Paragraph 3 does not correctly reflect the processes currently used in the automated searching of DNA profiles and unnecessarily establishes a procedure that runs against the proven procedures. In the DNA field, the necessity and the will to confirm a hit do not depend solely on the requesting state. Depending on the constellation, a match confirmation may also or only be desired by the requesting state or a match confirmation may not be necessary. The MS should be able to define this according to the individual case. Therefore, the paragraph should be redrafted so that no sole obligation lies with the requesting state.

Article 8

Reporting about DNA analysis files

Each Member State shall inform the Commission and eu-LISA of the national DNA analysis files, to which Articles 5 to 7 apply, in accordance with Article 73.

Commented [RMD19]: We would be grateful for an explanation why there is no equivalent in the present draft to the passage contained in Art. 2 (3) 2008/615/JI "and the conditions for automated searching as referred to in Article 3(1)".

Article 9

Reference numbers for DNA profiles

The reference numbers for DNA profiles shall be the combination of the following:

(a) a reference number allowing Member States, in case of a match, to retrieve further data and other information in their databases referred to in Article 5 in order to supply it to one, several or all of the other Member States in accordance with Articles 47 and 48;

(b) a code to indicate the Member State which holds the DNA profile;

(c) a code to indicate the type of DNA profile (reference DNA profiles or unidentified DNA profiles).

Article 10

Principles of DNA reference data exchange

1. Appropriate measures shall be taken to ensure confidentiality and integrity for DNA reference data being sent to other Member States, including their encryption.

2. 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 those measures comply with the relevant international standards for DNA data exchange.

Commented [RMD20]: Paragraph 2 seems to set higher requirements ("necessary" instead of "appropriate" and "guarantee" instead of "ensure") than paragraph 1. The wording should be adapted to paragraph 1.

3. The Commission shall adopt implementing acts to specify the relevant international standards that are to be used by Member States for DNA reference data exchange. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 76(2).

Article 11

Rules for requests and answers regarding DNA profiles

1. A request for an automated search or comparison shall include only the following information:

(a) the code of the requesting Member State;

(b) the date, time and indication number of the request;

(c) DNA profiles and their reference numbers referred to in Article 9;

(d) the types of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles).

2. The answer to the request referred to in paragraph 1 shall contain only the following information:

(a) an indication as to whether there were one or more matches or no matches ;

(b) the date, time and indication number of the request;

(c) the date, time and indication number of the answer;

(d) the codes of the requesting and requested Member States;

(e) the reference numbers of the DNA profiles from the requesting and requested Member States;

(f) the type of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles);

(g) the matching DNA profiles.

3. Automated notification of a match shall only be provided if the automated search or comparison has resulted in a match of a minimum number of loci. The Commission shall adopt implementing acts to specify this minimum number of loci, in accordance with the procedure referred to in Article 76(2).

4. Where a search or comparison with unidentified DNA profiles results in a match, each requested Member State with matching data may insert a marking in its national database indicating that there has been a match for that DNA profile following another Member State's search or comparison.

5. Member States shall ensure that requests are consistent with declarations sent pursuant to Article 8. Those declarations shall be reproduced in the practical handbook referred to in Article 78.

Commented [RMD21]: We are wondering what the purpose of this regulation is. Art. 11 (5) of the draft would be comprehensible if the passage "and the conditions for automated searching" was added to Art. 8 above see comment above.

SECTION 2

Dactyloscopic data

Article 12

Dactyloscopic reference data

1. Member States shall ensure the availability of dactyloscopic reference data from the file for the national automated fingerprint identification systems established for the prevention, detection and investigation of criminal offences.

2. Dactyloscopic reference data shall not contain any data from which an individual can be directly identified.

Commented [RMD22]: Shouldn't it be "any additional data" to clarify? Since Dactyloscopic reference data also allow identification.

3. Dactyloscopic reference data which is not attributed to any individual (unidentified dactyloscopic data) shall be recognisable as such.

Commented [RMD23]: We would like to propose to include paragraph 3 in Article 4.

Article 13

Automated searching of dactyloscopic data

1. For the prevention, detection and investigation of criminal offences, Member States shall allow national contact points of other Member States and Europol access to the dactyloscopic reference data in the automated fingerprint identification systems which they have established for that purpose, to conduct automated searches by comparing dactyloscopic reference data.

Searches may be conducted only in individual cases and in compliance with the national law of the requesting Member State.

2. The national contact point of the requesting Member State shall confirm a match of dactyloscopic data with dactyloscopic reference data held by the requested Member State following the automated supply of the dactyloscopic reference data required for confirming a match.

Article 14

Reference numbers for dactyloscopic data

The reference numbers for dactyloscopic data shall be the combination of the following:

(a) a reference number allowing Member States, in the case of a match, to retrieve further data and other information in their databases referred to in Article 12 in order to supply it to one, several or all of the other Member States in accordance with Articles 47 and 48;

(b) a code to indicate the Member State which holds the dactyloscopic data.

Article 15

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 in accordance with a uniform data format. The Commission shall adopt implementing acts to specify the uniform data format in accordance with the procedure referred to in Article 76(2).

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.

3. Member States shall take appropriate measures to ensure the confidentiality and integrity of dactyloscopic data being sent to other Member States, including their encryption.

Commented [RMD24]: We would be grateful for an explanation why there is no provision comparable to that in Art. 10 (2)?

4. The Commission shall adopt implementing acts to specify the relevant existing standards for dactyloscopic data exchange that are to be used by Member States. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 76(2).

Commented [RMD25]: We would like to suggest not using the word "existing" in order to be able to include further developments.

Article 16

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 inform the Commission and eu-LISA in accordance with Article 79(8) and (10) about their maximum search capacities per day for dactyloscopic data of identified persons and for dactyloscopic data of persons not yet identified.

2. The Commission shall adopt implementing acts to specify the maximum numbers of candidates accepted for comparison per transmission in accordance with the procedure referred to in Article 76(2).

Article 17

Rules for requests and answers regarding dactyloscopic data

1. A request for an automated search shall include only the following information:

(a) the code of the requesting Member State;

(b) the date, time and indication number of the request;

(c) the dactyloscopic data and their reference numbers referred to in Article 14.

2. The answer to the request referred to in paragraph 1 shall contain only the following information:

(a) an indication as to whether there were one or more matches or no matches;

(b) the date, time and indication number of the request;

(c) the date, time and indication number of the answer;

(d) the codes of the requesting and requested Member States;

(e) the reference numbers of the dactyloscopic data from the requesting and requested Member States;

(f) the matching dactyloscopic data.

SECTION 3

Vehicle registration data

Article 18

Automated searching of vehicle registration data

1. For the prevention, detection and investigation of criminal offences, Member States shall allow national contact points of other Member States and Europol access to the following national vehicle registration data, to conduct automated searches in individual cases:

(a) data relating to owners or operators;

(b) data relating to vehicles.

Commented [RMD26]: Under the current legal framework the quotas are negotiated bilaterally between the individual states and have been kept up to date in the form of a matrix maintained by the EU Council Secretariat (part of the EU State-of-Play document on Prüm data exchange). The quotas can easily be changed (e.g. due to expanded technical capacities or increased demand). The quotas (and compliance with them) are important factors for the technical functioning of the fingerprint data exchange and the protection of national systems from overload. From a DE point of view it is crucial to to maintain this flexibility in the new legal framework. We are there grateful for a confirmation that the same flexibility will be maintained in an implemting act.

Search Capacities should be controlled by the requested MS or by both parties. If these capacities are exceeded, this automatically triggers error messages. Thus, the requested MS can complete the search query with an error.

2. Searches may be conducted only with a full chassis number or a full registration number.

3. Searches may be conducted only in compliance with the national law of the requesting Member State.

Article 19

Principles of automated searching of vehicle registration data

1. For automated searching of vehicle registration data Member States shall use the European Vehicle and Driving Licence Information System (Eucaris).

2. The information exchanged via Eucaris shall be transmitted in encrypted form.

3. The Commission shall adopt implementing acts to specify the data elements of the vehicle registration data to be exchanged. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 76(2).

Article 20

Keeping of logs

1. Each Member State shall keep logs of queries that the staff of its authorities duly authorised to exchange vehicle registration data make as well as logs of queries requested by other Member States. Europol shall keep logs of queries that its duly authorised staff make.

Each Member State and Europol shall keep logs of all data processing operations concerning vehicle registration data. Those logs shall include the following:

(a) the Member State or Union agency launching the request for a query;

(b) the date and time of the request;

(c) the date and time of the answer;

(d) the national databases to which a request for a query was sent;

(e) the national databases that provided a positive answer.

2. The logs referred to in paragraph 1 may be used only for the collection of statistics and data protection monitoring, including checking the admissibility of a query and the lawfulness of data processing, and for ensuring data security and integrity.

Those logs shall be protected by appropriate measures against unauthorised access and erased one year after their creation. If, however, they are required for monitoring procedures that have already begun, they shall be erased once the monitoring procedures no longer require the logs.

3. For the purposes of data protection monitoring, including checking the admissibility of a query and the lawfulness of data processing, the data controllers shall have access to the logs for self-monitoring as referred to in Article 56.

Commented [SJ27]: First of all, we would like to ask a general question: Why is there no provision according to Art. 11 and 17 on the " rules for requests and answers"?

Commented [RMD28]: DE welcomes the fact that the mandatory use of the EUCARIS system is planned for automated data retrieval – as also set out in Recital 9.

Commented [SJ29]: We would like to ask first what is meant by "data elements". From the German point of view, the data categories should be dealt with in the regulatory text, not in an implemting act.

Commented [RMD30]: We suggest the following addition to Article 19 Paragraph 3: "The Commission shall adopt implementing acts to specify the data elements of the vehicle registration data to be exchanged, taking into account the respective availability of data and data elements in the corresponding national registers. "

Commented [RMD31]: We would be grateful for an explanation why there is a separate provision for the logs of all data processing operations concerning vehicle registration data in addition to Art. 40? Is this because the queries are to be made via EUCARIS?

SECTION 6

Common provisions

Article 29

National contact points

Each Member State shall designate a national contact point.

The national contact points shall be responsible for supplying the data referred to in Articles 6, 7, 13, 18, 22 and 26.

Article 30

Implementing measures

The Commission shall adopt implementing acts to specify the technical arrangements for the procedures set out in Articles 6, 7, 13, 18, 22 and 26. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 76(2).

Article 31

Technical specifications

Member States and Europol shall observe common technical specifications in connection with all requests and answers related to searches and comparisons of DNA profiles, dactyloscopic data, vehicle registration data, facial images and police records. The Commission shall adopt implementing acts to specify these technical specifications in accordance with the procedure referred to in Article 76(2).

Article 32

Availability of automated data exchange at national level

1. Member States shall take all necessary measures to ensure that automated searching or comparison of DNA profiles, dactyloscopic data, vehicle registration data, facial images and police records is possible 24 hours a day and seven days a week.

2. National contact points shall immediately inform each other, the Commission, Europol and eu-LISA of the technical fault causing unavailability of the automated data exchange.

National contact points shall agree on temporary alternative information exchange arrangements in accordance with the applicable Union law and national legislation.

3. National contact points shall re-establish the automated data exchange without delay.

Article 33

Justification for the processing of data

Commented [RMD32]: In the specific regulations for data exchange (Articles 13, 22 and 29), access to the data is limited to the "national contact point". At present, however, the initiation of a Prüm data comparison is also open to other competent authorities, and this should also apply in the future. In addition, there seems to be a contradiction within the current draft. In Art. 33 Paragraph 1 Sentence 1, for example, the wording "queries that its competent authorities make" can be found. What relationship between the requesting authority and the national contact point does KOM have in mind here? We are grateful for an explanation. Irrespective of this, we would like to propose that a regulation for the designation and notification of competent national authorities for the use of the Prüm information exchange is supplemented.

Commented [RMD33]: "for supplying the data referred to in Articles 6, 7, 13, 18, 22 and 26" is likely to fall short, since the national contact points have additional responsibilities according to the current draft.

Commented [RMD34]: We propose to add the following to Article 30 sentence 1: "The Commission shall adopt implementing acts to specify the technical arrangements for the procedures set out in Articles 6, 7, 13, 18, 22 and 26, taking into account the corresponding existing procedures for the automated search of data."

Commented [RMD35]: In our view, further specifications should be laid down for the reporting of system failures, for example in another Implementing Act. The type of report and the specific group of recipients should be specified in a binding manner.

Commented [RMD36]: Since the relevant mechanisms depend on decisions by national legislators, we propose replacing the phrase "that automated searching or comparison of DNA profiles, dactyloscopic data, vehicle registration data, facial images and police records" by the phrase "that automated searching or comparison set out in Articles 6, 7, 13, 18, 22 and 26".

Commented [RMD37]: We suggest to change "the technical fault" to "any technical fault"

1. Each Member State shall keep a justification of the queries that its competent authorities make.

Europol shall keep a justification of the queries it makes.

2. The justification referred to in paragraph 1 shall include:

(a) the purpose of the query, including a reference to the specific case or investigation;

(b) an indication on whether the query concerns a suspect or a perpetrator of a criminal offence;

(c) an indication on whether the query aims to identify an unknown person or obtain more data on a known person.

3. The justifications referred to in paragraph 2 shall only be used for data protection monitoring, including checking the admissibility of a query and the lawfulness of data processing, and for ensuring data security and integrity.

Those justifications shall be protected by appropriate measures against unauthorised access and erased one year after their creation. If, however, they are required for monitoring procedures that have already begun, they shall be erased once the monitoring procedures no longer require the justification.

4. For the purposes of data protection monitoring, including checking the admissibility of a query and the lawfulness of data processing, the data controllers shall have access to those justifications for self-monitoring as referred to in Article 56.

Article 34

Use of the universal message format

1. The universal message format (UMF) standard shall be used in the development of the router referred to in Article 35 and EPRIS.

2. Any automated exchange of data in accordance with this Regulation shall use the UMF standard.

Commented [RMD38]: Since the UMF standard currently does not cover all the elements required for the development of the router and EPRIS as well as for the automated data exchange, it should be supplemented "as far as applicable".

CHAPTER 3

ARCHITECTURE

SECTION 1

Router

Article 35

The router

1. A router is established for the purposes of facilitating the establishment of connections between Member States and with Europol for querying with, retrieving and scoring biometric data in accordance with this Regulation.

2. The router shall be composed of:

is used, subject to a cost-benefit analysis. eu-LISA shall also be responsible for the technical management of the necessary communication infrastructure.

Technical management of the router shall consist of all the tasks and technical solutions necessary to keep the router functioning and providing uninterrupted services to Member States and to Europol 24 hours a day, 7 days a week in accordance with this Regulation. It shall include the maintenance work and technical developments necessary to ensure that the router functions at a satisfactory level of technical quality, in particular as regards availability and the response time for submitting requests to the national databases and Europol data in accordance with the technical specifications.

The router shall be developed and managed in such a way as to ensure fast, efficient and controlled access, full and uninterrupted availability of the router, and a response time in line with the operational needs of the competent authorities of the Member States and Europol.

2. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68[16], eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its staff required to work with data stored in the interoperability components. This obligation shall also apply after such staff leave office or employment or after the termination of their activities.

eu-LISA shall not have access to any of the personal data processed through the router.

3. eu-LISA shall also perform tasks related to providing training on the technical use of the router.

CHAPTER 8

AMENDMENTS TO OTHER EXISTING INSTRUMENTS

Article 67

Amendments to Decisions 2008/615/JHA and 2008/616/JHA

1. In Decision 2008/615/JHA, Articles 2 to 6 and Sections 2 and 3 of Chapter 2 are replaced with regard to the Member States bound by this Regulation from the date of application of the provisions of this Regulation related to the router as set out in Article 74.

   Therefore, Articles 2 to 6 and Sections 2 and 3 of Chapter 2 of Decision 2008/615/JHA are deleted from the date of application of the provisions of this Regulation related to the router as set out in Article 74.

2. In Decision 2008/616/JHA, Chapters 2 to 5 and Articles 18, 20 and 21 are replaced with regard to the Member States bound by this Regulation from the date of application of the provisions of this Regulation related to the router as set out in Article 74.

Therefore, Chapters 2 to 5 and Articles 18, 20 and 21 of Decision 2008/616/JHA are deleted from the date of application of the provisions of this Regulation related to the router as set out in Article 74.

Commented [RMD39]: From the german point of view, it is questionable to what extent further participation in the Prüm data exchange for DNK and the Schengen-associated states is possible on this basis. We therefore support the DNK and CHE statements made in the december meeting and ask for an examination to adjust the text.

[16] OJ L 56, 4.3.1968, p. 1.

ITALY

MODULARIO
Interno - 372

Mod. 36/4 *PSC*

Ministero dell'Interno

DIPARTIMENTO DELLA PUBBLICA SICUREZZA

DIREZIONE CENTRALE DELLA POLIZIA CRIMINALE

Servizio per la Cooperazione Internazionale di Polizia
Delegazione IXIM

MI-123-U-B-IXIM-2022-14 Rome, 27 January 2022

OGGETTO: IXIM WP –13 January 2022 – Prüm proposal– Block 1-2 - Italian position.

TO IXIM WP

Bruxelles

Having regard to the first reading of the Blocks 1-2 of the Commission Prüm proposal (2021)784, the Italian delegation wishes to submit the following comments and observation.

BLOCK 1: INITIAL GENERAL PROVISION

1) Article 2: the drafted text provides for the possibility to search for "*missing persons and unidentified human remains*". Taking into account the explanation the Legal Service illustrated during the meeting, which we agree with, we deem that the proposal should contain a clear indication of the circumstances where such exchange can take place.

   Furthermore, the explanation that all data category included in the Regulation can be searched for, would be desirable.

BLOCK 2: CATEGORIES OF DATA

1) We request to include the words "Prevention and Detecting" in Article 5.1 because the current formulation doesn't provide for such possibility which we necessarily deem to be part of the proposal: "1. ***For the prevention, detection*** *and investigation of criminal offences, Member States shall open and keep national DNA analysis files*."

2) In line with the previous point, we propose to reframe Article 6.1 as follow[1]:

"1. ***For the prevention, detection*** *and investigation of criminal offences, Member States shall allow national contact points referred to in Article 29 and Europol access to the DNA reference data in their DNA analysis files, to conduct automated searches by comparing DNA profiles.*".

3) We deem that the current text of the Article 6 and 7 (DNA) is not clear and the operational procedure the Commission proposed doesn't fit with the real Police investigative needs:

- as first step we deem that any new **unknown DNA profile** should be automatically sent to all the other Member State's databases when no correspondence has been found in the National system;
- as second step and on regular basis[2], all the National System should sent the **"Delta"** – where no match is retrieved on national side – to all the other systems in order to search for correspondence and to have all national system up-to-dated.

4) We are in favour to include the **licence driving data** in the proposal although only for the prevention, detection and investigation of criminal offence. Our delegation, indeed, does not think there is enough legislative room to extend the mentioned new data category to the any administrative procedure. So, we are ready to support any proposal to include the driving licence within the framework of prevention, detection or investigation of criminal offence.

5) We ask for a clarification for the **National Contact Point (NCP)** definition as the Article 29 refers to. We deem important to clarify that any Member State can appoint more than one single NCP[3] (as much as it wants) and that such bodies are responsible for the technical infrastructure maintenance, for the supplying of data and for any further communication, which could occur during or due the exchange of data due to the search.

[1] In line with point 7 of block 2.
[2] Any consequential rule concerning the timing of the exchange in the second step, could be subject to a Commission Implementing Decision, issued accordingly the Committee Procedure.
[3] We think that such solution permits to any Member State to appoint one NCP for each system involved in the exchange the proposal provides for. At the same time, their competence are well defined.

6) We are open to discuss the possibility for Member State **to retrieve biometric** data **querying** the other Member State(s) system by **alphanumerical data**.

   We deem that such new possibility would complete the database exchange that the Regulation provide for. Indeed, any State could need – for any police reason – to require a biometric data of a subject whose biometric have not be recorded in National systems[4].

7) We consider that all the Articles proving for the biometric search (6-7-13 and 22) should be drafted as follows[5]: *"**For the prevention, detection** and investigation of criminal offences, Member States shall allow national contact points referred to in Article 29 and Europol access ….. (Dna-Finger-Faces)"*. Due to that, we ask for the same drafting in all the mentioned Articles.

8) **Verification process of biometric**[6]: we think that the **requested Member State** should **verify** the results of the requesting Member State verification. We are ready to discuss and support any other similar Member State(s) position. Considering that data are registered into the requested Member State database, we consider relevant that the requested Member State run a further verification in order to be sure that its own data really match the one the requesting Member State searched for.

   We deem that such suggestion is in line with the European framework of the Police Cooperation.

9) As last point and in line with the previous point, we suggest to introduce a further step in the process: when the requesting member State send the confirmation of the match, **the reason for request(s)** should be included in such confirmation message accordingly to the overall Police Cooperation legal framework which establishes that any single Police Cooperation requests should be motivated.
   As regard the latter point, we will send you a separate document (Block 3-7) on due time.

e-signed by
the head of delegation IXIM
Federico Sciaudone

[4] Querying the other member States' system by mean of family name, name and DOB (or even more values), the requesting MS could search for biometric data whether such data are not stored in their own national system. In such a case, the reason for request should be in line with the general provision of the proposal (prevention, detection and investigation) and data could be used accordingly the general Police Cooperation rules.
[5] Such Articles – providing for the single searches – are not drafted in the same way.
[6] We refer to all the biometric data (DNA, fingerprint and face image).

LATVIA

BLOCK 1

- **Article 4**

LV suggests the following definitions:

Point 1) *– 'loci' means DNA locations containing identification characteristics of the non-coding part of an analysed human DNA sample (singular: locus)* (LV does not see the need to refer to the molecular structure).

Point 2) *– 'DNA profile' means a letter or number code which represents a set of loci or particular molecular structure at the various loci.*

Point 18) – LV suggests to align this definition with the Interoperability regulation 2019/817 (Article 4 (16) – "*'Europol data' means personal data processed by Europol for the purpose referred to in Article 18(2)(a), (b) and (c) of Regulation (EU) 2016/794*"); in this context, please, see also Article 49 (1) of the Prum Ii draft regulation *("Member States shall, in accordance with Regulation (EU) 2016/794, have access to, and be able to search via the router, biometric data which has been provided to Europol by third countries for the purposes of Article 18(2), points (a), (b) and (c), of Regulation (EU) 2016/794*").

- **Article 67**

Para (1) – LV suggests referring also to Article 1 a) of the Decision 2008/615/JHA.

Para (2) – LV suggests referring also to Article 1 of the Decision 2008/616/JHA.

In addition, LV would suggest deletion of Article 2 (on definitions) of the Decision 2008/616/JHA.

BLOCK 2

- **Article 6**

Para (1) – in the context of Europol, LV suggests addition "*when carrying out its tasks referred to in Regulation (EU) 2016/794)*".

- **Article 8**

LV suggest to align Article 8 with Article 73, namely, the latter has to be complemented with reference to Article 8.

- **Article 16**

Para (1) – it remains unclear why references to Article 79 (8) and (10) are included; LV would therefore welcome clarifications on the exact procedure how Member States shall inform the Commission and eu-LISA (about their maximum search capacities per day for dactyloscopic data of identified persons and for dactyloscopic data of persons not yet identified).

SLOVAKIA

The Slovak delegation would like to present to the IXIM Working Party the comments concerning the Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation ("Prüm II"), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2019/818 of the European Parliament and of the Council:

The reasoning of the new regulation proposal states that the regulation is intended to enable the authorities of the Member States, that are responsible for preventing and investigating terrorism and cross-border crime, to improve and streamline the exchange of criminal information and to lay down rules for exchanging DNA profiles, dactyloscopic data, facial images and vehicle registration data for prevention and investigation purposes. These types of data should be exchanged on a mandatory basis, i.e. Member States will be obliged to engage in such data exchanges. **We do not support mandatory connection to the exchange of facial images** and we propose to have the option to choose the connection to the exchange, similar to the one given to criminal information (the new EPRIS information system).

A central router is set up for automated data exchange - a tool designed to provide a single connection to other Member States databases and thus the Member States will not have to build bilateral links between databases, but a connection to a central router will be sufficient. SK supports this purpose.

In addition to this functionality, the router will rank the search results from the Member States databases according to the highest score and forward them to the requesting Member State.

Such score exists in dactyloscopic data, we assume that it exists within facial images as well, but it does not exist in DNA profiles and VRD data. Since the scores are determined by variety of systems from different Member States, we cannot imagine how, without compromising the integrity of the response file, can this arrangement be implemented by a central router. We assume, that having at least minimal access to the sent response will be necessary, which already manipulates the files by the central router and this inspection will probably make personal data that should not be accessible by this tool available for it.

The exchange of data until now allowed the Member State to choose/select in advance to which Member State should be the data send, whether it will be one or more, or all of the connected Member States. Or Europol. **We propose that this option should be maintained and that Member States should not be forced to the automatic exchange** of data in the form "everyone with everyone connected". **Daily limitations** are defined in dactyloscopic data, we propose to adopt this philosophy for facial images as well. We also propose that the exchange of DNA profiles should take place on a daily basis and daily increments of national databases will be exchanged.

The central router should be connected via the European Search Portal (ESP) to the Common Identity Repository (CIR). We do not see enough added value in this connection. In terms of data, the CIR will contain only dactyloscopic data that are suitable for comparison with the submitted data. It will not contain DNA profiles, and facial images are within limited numbers and are usually an option, not an obligation that needs to be send within the Core systems (VIS, Eurodac, ECRIS-TCN) from which the CIR is created. In this case, the only crime-related databases are under ECRIS-TCN, other systems contain civilian data and have access to them, for the purposes of preventing terrorism and serious crime investigations, which is already defined in the individual regulations. The new PRUM II regulation could lead to circumvent of the regulations, where the conditions for searching through this civilian data are set stricter and clearer than in the proposed PRUM II regulation. This Regulation does not define which criminal offenses are covered within the range of search options from ESP to CIR.

This data exchange is already covered within existing information exchange tools and, in our view, is not necessary. **In general we do not support the connection of the central router to ESP and its further connection to CIR.**

The exchange of metadata for verified compliance shall be automated and, if a Member State requests such data, the requested Member State shall reply in an automated manner within 24 hours. We can provide the 24 hours limite for a response only for dactyloscopic data, where the permanent service is established. In the case of DNA profiles and facial images, it would be necessary to set up such a service, which we consider to be a disproportionate staff and financial burden. Therefore, we propose to change the time limit to 72 hours (similar to the obligation to send data under the Eurodac Regulation 603/2013).

We also **propose to have the possibility to decline the submission of metadata in certain cases**. In the automated exchange of DNA profiles, we have experience over the last 10 years that in the case of a match where only 6 loci match, up to 60% of such matches are false positive. If a Member State were to be obliged to provide meta-data at all times, in 60% of cases a person could be criminalized on the basis of a false-positive DNA profile match. The request for this data could still be possible to submit, e.g. through an individual request through international police cooperation, where the response of the requested State could already indicate that there is a need to investigate compliance in the given case, as there is very high possibility of a false positive.

According to the draft regulation, any exchange between Member States or with Europol that is not provided for in this Regulation is to take place through the SIENA channel. SK opposes the mandatory use of SIENA channel and **proposes to apply the use of the SIENA network only to Member States' communication with Europol.**

The draft Regulation proposes to delete or replace certain provisions of Council Decision 2008/615/JHA. These are provisions concerning the exchange of dactyloscopic data, DNA profiles and VRD data. It is necessary to ensure that there is no situation where a Member State still exchanges data "in the old way" but is not yet technically ready for the new method and where a Member State cannot exchange the data in an old way nor under the new Regulation.

We envisage the exchange of data under the new regulation as a **gradual, continuous transition from one data exchange method to another,** and it is important to ensure that both data exchange methods work simultaneously over a certain period of time.

Chapter 2:

Section 1 - DNA profiles

- **In Art. 7, in the title, we propose to remove the word "unidentified".** Then the title of the article would read: "Automatic comparison of DNA profiles".

Justification: The original title of the article only covered unidentified DNA profiles, therefore the profiles of persons also exchanged in the PRUM exchange were not included. The proposed title applies to all types of exchanged data and describes the content of the article better.

- **In Art. 7, par. 1 we propose to replace the first sentence** as follows: "1. Member States shall, via their national contact points, compare the daily increment of their national DNA analysis files with all DNA profiles from other national DNA analysis files for the investigation of criminal offenses. Profiles shall be supplied and compared in an automated manner. "

Justification: The originally proposed wording lacks a definition of the obligation to send a regular increment of all DNA profiles (of persons and forensic evidence), which results in the necessary need to regularly send all DNA profiles of unknown origin (in some MS even hundreds of thousands) and thus time delay in their identification. There is also an uneven load and blocking of information systems. The time delay is currently several months and the blocking of systems lasts several hours. Our proposed wording allows the load of systems to be distributed continuously, even at night, and represents the minimum blocking time and identification of DNA profiles of unknown origin within 24 hours. This solution is currently being implemented by several Member States, and there is a lack of enforcement for other Member States.

Section 2 - Dactyloscopy

- **In Art. 14 letter (a) we propose to replace by the following:** "(a) a reference number allowing Member States and Europol, in case of a match, to retrieve core data in accordance with Article 47".

Justification: The purpose of this article is to provide the reference number of the match and the identifier of the country where the match occurred, i.e. the data on the basis of which it will be possible to request the sending of basic data according to Art. 47. As match may also arise for transactions initiated by Europol, we consider that Europol should have authorization in this article. We consider the wording proposed by us to be clearer.

- **In Art. 15 v par. 1, as regards the second sentence we propose it to be reworded as follows:** "The Commission shall adopt implementing acts to specify the digitization of dactyloscopic data and their transmission with the procedure referred to in Article 76 (2)."

Justification: Simplification of the text while maintaining the content. We would like to avoid the use of the UMF here, adjustments to the AFIS system are expensive and technically non-trivial.

Section 4 - Facial Images.

In this area we propose to apply the same approach as for fingerprints data which means to include the definition of daily maximum search capacities of individual Member States.

- **In Art. 21, par. 1, we propose that the introductory sentence be reworded** as follows: "Member States may decide to participate in the automated exchange of facial images from national databases ...".

Justification: As we stated in our introductory comments on the proposed mandatory exchange of facial image data, we propose to give Member States the option of joining this category of data exchange. The police in the Slovak Republic do not currently have a national database of facial images. In the process of exchanging facial images, we cannot imagine how to ensure that it is not possible to identify a person on the basis of the data sent, when the facial image is the basis for individual identification of the person. In addition, it is not clear to us what is meant by the last, separately standing sentence in paragraph 1.

- In Art. 23 letter a) we propose to apply the same wording, to simplify the text as for Art. 14, i.e. "(A) a reference number allowing Member States and Europol, in case of a match, to retrieve core data in accordance with Article 47".

Section 6 – General provisions.

- **In the article 31, the text "shall observe" needs to be reworded** in order to precisely specify the tasks of member states and Europol regarding technical specifications. It is not clear what would be achieved by observing the technical specifications.

- **In addition to technical specifications, it is also needed to define the minimum quality standards for the data exchange (dactyloscopy, DNA profiling, face recognition).**

- **In article 32, we propose** to change the 24-hour limit to 72 hours.

- **In the article 33, paragraph 2, proposed wording of letters b) and c)** is impracticable with collected traces and difficult to enforce with persons of known identity, therefore **we propose to delete it in its entirety and without compensation**. It is not possible to indicate, according to an unidentified evidence, whether the search involves a suspect or accused person, or whether it is a search to identify an unknown person or to identify a known person. There are a lot of searches involved during DNA profiles exchange, in which we simply do not have this detailed information in advance or, in some cases, even after the search.

  SK carries out searches for law enforcement agencies per request. All of the outcomes are recorded, we do not perceive fulfilment of Article 33 letter a) as problematic. Letters (b) and (c) represent an unnecessary and disproportionate administrative burden.

- In Article 33, paragraph 3, the Member States are required to preserve data that justify the authorization of data processing by PRUMII tools used for monitoring the personal data protection, including those with expiring 1-year retention period. In these cases, Member States need to know that such process has started in order to take measures that would preserve this data even after the deletion/shredding period.

Chapter 3

Section 1 – Architecture.

- **In article 37, we propose to add the text** that would clarify that a Member State will be entitled to send a request to one, two, or all of the Member States and Europol, and its data will not be automatically sent to all connected Member States and their databases.

- **In article 37, paragraph 4** mentions sorting answers by "score", but we believe this cannot be applied for DNA profiles. We are not sure if it is possible to make this sorting without opening and looking through the response.

  According to the regulation, the router should not have access to personal data. Scoring is not possible, in our opinion, without decrypting and opening the response file, extracting the data (they may be incompatible between different systems and therefore incomparable) and looking through the file.

Chapter 4

- **In article 47 we propose to change the obligation** of sending data to the possibility of making decision about the sending additional "core" data. We propose the following wording of the introductory phrase in this article: „*Where the procedures referred to in Articles 6, 7, 13 or 22 show a match between the data used for the search or comparison and data held in the database of the requested Member State(s), and upon confirmation of this match by the requesting Member State, the requested Member State shall* ***decide whether to*** *return a set of core data via the router within* ***72 hours****.“*

- **Text in article 47 letter f),** we propose to add the word "biological" before the text "gender".

Reasoning: The requested Member States should have the right to decide whether they should provide personal data of their citizens in case that the match was not evaluated as solid from their point of view (for example low number of common markers in DNA profiles). In case, that our request would not be accepted, we request that the mentioned "set of core data" will contain optional information about the need of taking further steps when determining the unambiguity of the match.

The 24-hour period for DNA profiles is too short, so we propose the period of 72 hours.

Reasoning for letter f): DNA profiles may contain information about biological sex that may be contrary to information provided based on a modern understanding of the word gender.

- **- In article 48** we request that the use of SIENA will be applied only to communication with Europol. Needs more clarification: "Any exchange which is not explicitly provided for in this Regulation between Member States' competent authorities or with Europol ..."

Chapter 5 – *EUROPOL*

In article 50 paragraph 6 letter f) the text needs to be changed to "biological gender". See justification above.

Chapter 8 - *Additions to existing tools*

- **In article 67 paragraph 1 and 2, we propose that mentioned paragraphs should be reworded** so the exchange of data is progressively replaced in accordance with the Decision, instead of being "cut-off" from the data exchange starting with the date of the exchange according to the new PRUMII Regulation.

Chapter 9 *- Final provisions*

- **In article 74 paragraph 1 in the second section**, we propose **to extend the one year long** implementation period to at least two years.

Reasoning: The department needs at least 2 years for the technical implementation of implementing acts of the new regulation since obtaining the final draft. Given that funding will be provided through EU funds, we do not anticipate that it will be possible to compete for a technical solution sooner than 12 months after the announcement of the tender. We cannot estimate the duration of the implementation itself at all, as it is not a purchase of a ready-made solution, but the development of a new system, a superstructure over the existing one, and at the same time it is likely to upgrade backend and frontends of AFIS and CODIS information systems.

Should it be necessary to start exchanging facial images, we will be forced to set up this information system as well.

SLOVENIA

Slovenia expresses thanks for the document »Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on automated data exchange for police cooperation ("Prüm II"), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2019/818 of the European Parliament and of the Council« and emphasizes that we always supported all efforts to strengthen the effectiveness of police cooperation and the successfulness of police work in the fight against crime when ensuring security of our citizens.

Slovenia sees the need to further strengthen automated exchange of data, which will improve, facilitate and accelerate data exchange. This is key to internal security. We believe that it is of utter importance to have a thorough discussion on the details of the Proposal in order to improve the document.

The document is still under examination, however we can provide some comments regarding blocks 1 and 2:

1. Art. 1

SI supports CLS legal opinion regarding driving licence data. Driving licence data as are in EUCARIS, should be available for exchange between authorities responsible for the prevention, detection and investigation of criminal offences.

2. Art. 3

Wording "national database" should be changed to "database established on basis of national law".

Driving licence data as are in EUCARIS, should be available for exchange between authorities responsible for the prevention, detection and investigation of criminal offences.

3. Art. 18a

We propose to add "holders".

4. Art. 19

As mentioned under points 1. and 2., SI proposes to add Driving licence data.

SPAIN

First of all, thanks the COM for the effort to improve the legal framework for the automated exchange of data, mainly biometrics, but also other types of records which are undoubtedly of high interest to the LEAs.

In a first review of Blocks 1 and 2, we would like to make the following comments:

Chapter 1 “General Provisions”

Art.1 Subject framework.

Art.2 Purpose.

In the second paragraph where a reference is made to the possibility of using Prüm to work on UHR (unidentified human remains) and MP (missing persons) issues, a better writing is suggested, so that it is clear in which cases its use is possible and in which not. On the other hand, the lexicon used by the countries is varied: UB (Unidentified Body), UP (Unidentified Person) and UHR (Unidentified Human Remain), all of them included in the current exchange as ‘stain’, but we understand that it could be appropriate that in the proposal it could be referenced in some way the categories included in the exchange, since they are the names authorized by the different Prüm countries for their corpses and unidentified remains.

Art.3 Scope

We miss the reference to the national regulations where the national Files that are the source of data to be exchanged are based.

Article 4 Definitions.

In subsection 4(4) *'DNA reference data'* is not very appropriate, this expression can lead to confusion, especially since '*reference*' is usually used to refer to undoubted biometrics (known profiles, fingerprints…) and 'DNA reference data' covers profiles of both a known and unknown . In fact, in Art 5, to make a clarification the current text is forced to introduce a parenthesis “*DNA reference data which is not attributed to any individual (unidentified profiles) shall be recognizable as such*”.

Regarding this article dedicated to definitions, especially those that talks about forensic terminology, we propose not to create new definitions but to follow what has already been written in the standardization committees in this field, internationally recognized not only at European level, specifically those definitions included in ISO 21043-1 and other regulations that are currently under development or in the ENFSI good practice manuals (which, in addition to procedures, include the standardized lexicon). This request is reinforced by the fact that it is desired to exchange information with third countries in the framework of Prüm, it is the way to use the terms appropriately.

In subsection 4(16) *'police records'*, the definition is unclear, a very broad definition, so that each MS could exchange data of a very different nature.

There would be no problem in leaving the definition so broad, if the current text relating to the exchange of police data via EPRIS could be modified and made it clearer or, if not, by including the need for MS to communicate a list of data that can be exchanged in this way.

Subparagraph 4(21) the definition of *'significant incident'* is a negative formulation, making it more difficult to understand. An alternative text would be helpful.

Chapter 2 exchange of information

Section DNA (Art. 5 to 11)

We understand that within this revision of the current Decisions 615 and 616 it would be highly recommended, and it is also currently feasible due to the level of technological development extended in the different MS, to increase the automated exchange of profiles by at least 1 loci (ideally two). Go therefore from 6-1 to 7-1 or 8-1. This would reduce adventitious matches (potential matches that are ultimately discarded resulting in a revised no match) very significantly. This is very important, especially if we think that the exchange of genetic information handles a very large number of results (there is no limitation of transactions/queries as in the case of FP) and consumes a lot of resources to verify matches.

On the other hand, we also do not note that it has been included in the current text, to quality standards included in Framework Decision 906/2009, necessary to be able to participate in the exchange, it would be necessary to explicitly include either the aforementioned Framework Decision or the mandatory accreditation of the laboratories that are the source of the biometric data (in the current Regulation it should apply to DNA, FP and facial images). Ensuring full confidence in the results issued by the different forensic laboratories is the basis where the legal certainty necessary to endorse post-match information resides.

Despite the fact that the COM indicated that all categories are usable for PD and RH, in addition to what is written about Art. 2, but related to Articles 5 to 11 and 12 to 17, it should be clearly mentioned in the articles of each one of the types of data to be exchanged that may also be used for these cases of missing persons and human remains. In this way there is no place for interpretation regarding the articles and therefore there is greater legal certainty.

Art. 5

Include the other possibilities '...detention, prevention...' in addition to 'identification'

Art.6

Section 1. It is not very clear what the exchange mechanism is like. If the idea is not to alter what is already in operation, and a large part of the success of the automatic exchange of genetic profiles lies in the fact that each new profile that enters the national database (which can be sent to Prüm. Art 4 of the current Decision 615/2018 JHA) is exchanged with the text currently under evaluation that includes *'only individual cases'*, with which we are losing the power of automation.

Regarding Articles 42 to 46, specifically the mandatory data for the search in EPRIS, as contained in article 43.1, it seems that to run a search looking for a person it is mandatory to insert name, surname and date of birth, it would be desirable to make a clarification on this.

SWEDEN

These comments are preliminary and may be reviewed in the light of further discussions.

Article 3 Scope

Since the necessity and feasibility to exchange **driving license data** is established, while the Commissions assessment of the proportionality is disputed, SE would propose to continue discussions on possible ways to provide automated exchange of these data for the prevention, detection and investigation of crime.

Article 4 Definitions

(10) It should be clarified whether “Digital image of a face” means (or includes) biometric templates?

(16) ”Police records” need to be more precisely defined to allow for predictability and reciprocity. The definition should focus on information, not on databases, systems or registers.

Article 5 Establishment of national DNA files

Rename the article to “DNA reference data”, delete the first sentence of para 1 (“open and keep”) and merge the remaining part of para 1 with para 2. Consider broadening the purpose to ”prevent, detect and investigate”.

Articles 6 and 7 Automated search and automated comparison

Reword both articles to distinguish them better and to clarify their respective use. Article 7 should deal with the one-off mass comparison of historical data. Article 6 should regulate the subsequent, continuous searching with new profiles/traces, making further “historical” mass comparisons superfluous.

Article 16

SE proposes to assess whether the router could queue fingerprint searches and distribute unused search capacities between MS.

Article 33

The concept of “justification” as expressed in the article seems to require a specific, administratively burdensome routine, that is normally provided for only in exceptional cases. C.f. IO Regulations Art. 22: “Where exceptionally, such full access is not requested, the designated authorities shall record the justification for not making the request, which shall be traceable to the national file.” To ensure the needed traceability between the logs and the cases justifying the searches, it would suffice to use wording, preferably in the logging article, similar to the Ecris-TCN Regulation, Article 31.3: ”The log of consultations and disclosures shall make it possible to establish the justification of such operations.”