

EXPLANATORY MEMORANDUM ON JUSTICE AND HOME AFFAIRS MATTERS

Council Decision on the stepping up of cross-border cooperation,
particularly in combating terrorism and cross-border crime

Submitted by the Home Office on 5th March 2007

SUBJECT MATTER

1. Measures to improve law enforcement co-operation, particularly in the area of information exchange, replicating or very closely based on parts of the existing Prüm Convention and associated documents which set out the German Presidency intentions. The provisions primarily provide for the sharing of DNA, fingerprints and vehicle registration data by police and law enforcement agencies.

Scrutiny history

2. Home Office Minister Joan Ryan wrote to the Scrutiny Committees on 2 February 2007 to inform Parliament of an expected initiative to incorporate parts of the Prüm Convention into EU law, in advance of a formal proposal.

MINISTERIAL RESPONSIBILITY

3. The Home Secretary has overall responsibility for law enforcement in England and Wales. The Scottish Executive Minister for Justice has responsibility for the justice portfolio in Scotland including policing. The Secretary of State for Transport and the Secretary of State for Scotland have responsibility for the Driver and Vehicle Licensing Agency and the data that they hold. The Secretary of State for Northern Ireland and Wales

has responsibility for policing and justice in Northern Ireland. The Lord Chancellor, the Secretary of State for Constitutional Affairs, has responsibility for data protection.

LEGAL AND PROCEDURAL ISSUES

i) Legal basis

4. The legal basis for the draft Council Decision is Article 30(1)(a) and (b), Article 31(1) (a), Article 32 and Article 34(2)(c) of the Treaty on European Union (TEU).

ii) European Parliament procedure

5. The European Parliament will be consulted on the proposal in accordance with Article 39 of the TEU.

iii) Voting procedure in the Council

6. The Council Decision will require unanimity under Article 34 TEU.

iv) Impact on United Kingdom Law (including Gibraltar)

7. Primary legislation is likely to be required to provide for the disclosure of the registered vehicle keeper data specified by the draft Council Decision.

8. The Government of Gibraltar are being consulted on their participation.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

9. The draft Council Decision does not apply to the non-EU EEA States.

SUBSIDIARITY

10. The draft Council Decision complies with the principle of subsidiarity since its objectives could not be achieved at a purely domestic level.

POLICY IMPLICATIONS

11. The Government broadly welcomes this proposal as a way of improving practical co-operation between Member State's law enforcement authorities. The proposal has the potential to aid the identification of

individuals, including foreign nationals who have committed crimes abroad or whom have committed crimes in the UK but are residing in another EU Member State.

Data Sharing Provisions

12. The draft Council Decision provides a mechanism for the exchange of information between police and law enforcement bodies, consistent with the principle of availability. The Government supports the application of the principle of availability and therefore welcomes a measure that provides a concrete method for its implementation in relation to three specific types of data. The Presidency has indicated that whilst this Council Decision is under negotiation they will not be tabling for further discussion the separate Commission proposal for a Framework Decision on the exchange of information under the principle of availability.

13. As regards DNA and fingerprint data information, this is to be exchanged on a "Hit/No Hit" basis, subject to appropriate data protection arrangements. In Germany and Austria where parts of the Prüm Convention are already being implemented, the operation of the "hit/no hit" system has resulted in hits on a large number of murders, rapes and other serious crimes with a cross-border element. The "Hit/No Hit" system means that any search against appropriate databases would do no more than confirm the existence of this strand on the database of the other Member State (hit) or to deny the existence on the database (no hit). Any further personal information would have to be obtained according to the requested States' national law including through mutual legal assistance arrangements, as is currently the case. Therefore the Council Decision would not provide for greater access to personal information but would allow the police to establish more quickly whether relevant information existed.

14. The draft Council Decision also allows for potentially direct access to vehicle registration data but not to driver licensing data.

Article 18 – Measures in the event of immediate danger

15. At the JHA Council on the 15th February it was provisionally agreed that this article, which provides for immediate assistance from a neighbouring Member State's police without the prior consent of the receiving State in the event of certain emergency situations, would not be sent to the European Parliament. The Government supported deletion of this article.

16. Nonetheless, a number of other Member States are keen to see the Article being taken forward in the EU framework in some form. The Presidency is discussing options, which we will consider carefully to ensure that our concerns are met. The UK does not participate in the current hot pursuit arrangements provided for in the Schengen Convention.

Data Protection

17. We are considering in detail the data protection provisions in the draft Council Decision and their relationship with other third pillar instruments, particularly the Data Protection Framework Decision. We believe they are largely consistent with UK national law on the sharing of information with other Member States. It should also be noted that if the Data Protection Framework Decision comes into force in the future, it will apply to all third pillar measures.

Other Provisions

18. The draft Council Decision also allows for the sharing of information for the prevention of terrorist offences and for the maintenance of public order. This would not involve the UK sharing any more information than it does currently. It also includes an article on Joint Operations; this defers to national law and does not therefore extend any powers to foreign police on UK soil. This article would not therefore extend the powers of foreign police to carry firearms on the UK territory.

Presidency Intentions

19. The Presidency issued a covering note accompanying the draft Council Decision, 6220/07. The covering note sought Member State support for

work on the draft Council Decision to be taken forward in the Article 36 Committee with a view to adopting the proposal in June. We will continue to engage in discussions constructively.

REGULATORY IMPACT ASSESSMENT

20. A regulatory impact assessment is not required as this proposal has no impact on public or private sectors, charities, the voluntary sector or small business.

FINANCIAL IMPLICATIONS

21. Germany has stated that the costs to them of implementing the Prüm Convention, including the provisions that are included in the draft Council Decision, have been in the region of £600,000. We are considering in detail what the financial implications for the UK might be but the initial view of UK experts is that the costs associated with implementing Prüm among all 27 EU Member States may be considerably higher, depending in part on the precise technical arrangements for allowing Member States to link into one another's systems. We are currently exploring with Germany and other existing Prüm participants the basis on which their costings were developed, with a view to further developing our own cost analysis.

CONSULTATION

22. The Government will not be consulting externally on this proposal.

TIMETABLE

23. The German Presidency has indicated that it wishes to secure agreement to the Council Decision the Justice and Home Affairs Council in June.



Handwritten signature of Joan Ryan in black ink, consisting of a stylized 'J' and 'R' followed by a horizontal line and a flourish.

JOAN RYAN

**PARLIAMENTARY UNDERSECRETARY OF STATE
HOME OFFICE**