



**COUNCIL OF
THE EUROPEAN UNION**

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**CRIMORG 69
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NOTE

From : Presidency
To : delegations

No. prev. doc. : 16329/07 CRIMORG 188 ENFOPOL 217
7713/08 CRIMORG 52 ENFOPOL 54
11896/07 CRIMORG 127 ENFOPOL 137

Subject : Draft Council Decision on the implementation of Decision 2008/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

Draft Council Decision on the implementation of Decision 2008/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

1. In its meeting of 8-9 November 2007, the Council reached a general approach on the main part of the above-mentioned draft Council Decision, set out in document 16329/07 CRIMORG 188 ENFOPOL 217.
2. The Article 36 Committee of 6 February 2008 agreed on the text of the Annex to the above-mentioned Council Decision, as set out in document 7713/08 CRIMORG 52 ENFOPOL 54.
3. On 21 April 2008, the European Parliament delivered its opinion on this draft Council Decision, including its Annex. This opinion was examined within the Council on 7 May 2008. The current document takes into account modifications following from EP amendments.

4. The main change relates to the fact that amendments to the Annex will be done via the same procedure as the main part of the implementing Decision, i.e. the Council acting by qualified majority after consultation of the European Parliament. This is a consequence of the judgement rendered by the Court on 6 May 2008 in case C-133/06.

Draft Council Decision 2008/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

5. In order to ensure that this procedure for amending the implementing Decision (including its Annex) is preserved for the entire duration of the Council Decisions' lifespan, it is found necessary to modify Article 33 ("Implementing measures") of the original Prüm Decision (doc. 11896/07), as follows:

The Council, acting by a qualified majority and after consulting the European Parliament, shall adopt measures necessary to implement this Decision at the level of the Union.

6. This is in line with what was done in the Council Decision on Europol (see its Articles 14(1), 25(1) and 39(1)) and does not affect the substance of the provision. The change merely consists of writing out the applicable procedure rather than referring to Article 34(2) of the TEU, which will no longer be relevant after the entry into force of the Lisbon Treaty.

Conclusion

7. Provided there are no objections to this drafting amendment to the original Prüm Decision, the Presidency will ensure that the original Decision is corrected and made ready for adoption by the Council as soon as all the national parliamentary reservations are lifted.

8. The implementing Decision, including its Annex, will be submitted to Coreper and Council for general approach.

DRAFT

COUNCIL DECISION 2008/.../JHA¹

of...

on the implementation of Decision 2008/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

THE COUNCIL OF THE EUROPEAN UNION

Having regard to Article 33 of Council Decision 2008/.../JHA,

Having regard to the initiative of the Federal Republic of Germany,

Having regard to the Opinion of the European Parliament,

WHEREAS:

- (1) On ... 2008 the Council adopted Decision 2008/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.
- (2) By means of Decision 2008/.../JHA, the basic elements of the Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration (hereinafter "the Prüm Treaty"), were transposed into the legal framework of the European Union.

¹ DK, IE, SE parliamentary reservation.

- (3) Article 33 of Decision 2008/.../JHA provides that the Council is to adopt the measures necessary to implement Decision 2008/.../JHA at the level of the Union in accordance with the procedure laid down in the second sentence of Article 34(2)(c) of the Treaty on European Union. These measures are to be based on the Implementing Agreement of 5 December 2006 concerning the administrative and technical implementation and application of the Prüm Treaty.
- (4) This Decision establishes those common normative provisions which are indispensable for administrative and technical implementation of the forms of cooperation set out in Decision 2008/.../JHA. The Annex contains implementing provisions of a technical nature. Furthermore, a separate Manual, containing exclusively factual information to be provided by the Member States, will be drawn up and kept up to date by the General Secretariat of the Council.
- (5) Having regard to technical capabilities, routine searches of new DNA profiles will in principle be carried out by means of single searches and appropriate solutions for this will be found at technical level.

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL

Article 1

Aim

The aim of this Decision is to lay down the necessary administrative and technical provisions for the implementation of Decision 2008/.../JHA, especially for the automated exchange of DNA data, dactyloscopic data and vehicle registration data as set out in Chapter 2 thereof as well as other forms of cooperation as set out in Chapter 5 thereof.

Article 2

Definitions

For the purposes of this Decision:

- (a) "search" and "comparison" as referred to in Articles 3, 4 and 9 of Decision 2008/.../JHA **shall** mean the procedures by which it is established whether there is a match between, respectively, DNA data or dactyloscopic data which have been communicated by one Member State and DNA data or dactyloscopic data stored in the databases of one, several, or all of the Member States;
- (b) "automated searching" as referred to in Article 12 of Decision 2008/.../JHA **shall** mean an online access procedure for consulting the databases of one, several, or all of the Member States;
- (c) "DNA profile" **shall** mean a letter or a number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, i.e. the particular molecular structure at the various DNA locations (loci);
- (d) "non-coding part of DNA" **shall** mean chromosome regions not genetically expressed, i.e. not known to provide for any functional properties of an organism;
- (e) "DNA reference data" **shall** mean a DNA profile and a reference number;
- (f) "reference DNA profile" **shall** mean the DNA profile of an identified person;

- (g) "unidentified DNA profile" **shall** mean the DNA profile obtained from traces collected during the investigation of criminal offences and belonging to a person not yet identified;
- (h) "note" **shall** mean a Member State's marking on a DNA profile in its national database indicating that there has already been a match for that DNA profile on another Member State's search or comparison;
- (i) "dactyloscopic data" **shall** mean fingerprint images, images of fingerprint latents, palm prints, palm print latents as well as templates of such images (coded minutiae), when they are stored and dealt with in an automated database;
- (j) "vehicle registration data" **shall** mean the data-set as specified in Chapter 3 of the Annex to this Decision;
- (k) "individual case", as referred to in Article 3(1), second sentence, Article 9(1), second sentence and Article 12(1) of Decision 2008/.../JHA, **shall** mean a single investigation or prosecution file. If such a file contains more than one DNA profile, or one piece of dactyloscopic data or vehicle registration data, they may be transmitted together as one request.

CHAPTER 2

COMMON PROVISIONS FOR DATA EXCHANGE

Article 3

Technical specifications

Member States shall observe the common technical specifications in connection with all requests and answers related to searches and comparisons of DNA profiles, dactyloscopic data and vehicle registration data. These technical specifications are laid down in the Annex to this Decision.

Article 4

Communications network

The electronic exchange of DNA data, dactyloscopic data and vehicle registration data between Member States shall take place using the Trans European Services for Telematics between Administrations (TESTA II) communications network and further developments thereof.

Article 5

Availability of automated data exchange

Member States shall take all necessary measures to ensure that automated searching or comparison of DNA data, dactyloscopic data and vehicle registration data is possible 24 hours a day and seven days a week. In the event of a technical fault, the Member States' national contact points shall immediately inform each other and shall agree on temporary alternative information exchange arrangements in accordance with the legal provisions applicable. Automated data exchange shall be re-established as quickly as possible.

Article 6

Reference numbers for DNA data and dactyloscopic data

The reference numbers referred to in Article 2 and Article 8 of Decision 2008/.../JHA shall consist of a combination of the following:

- (a) a code allowing the Member States, in the case of a match, to retrieve personal data and other information in their databases in order to supply it to one, several or all of the Member States in accordance with Article 5 or Article 10 of Decision 2008/.../JHA,
- (b) a code to indicate the national origin of the DNA profile or dactyloscopic data, and
- (c) with respect to DNA data, a code to indicate the type of DNA profile.

CHAPTER 3

DNA DATA

Article 7

Principles of DNA data exchange

1. Member States shall use existing standards for DNA data exchange, such as the European Standard Set (ESS) or the Interpol Standard Set of Loci (ISSOL).
2. The transmission procedure, in the case of automated searching and comparison of DNA profiles, shall take place within a decentralised structure.
3. Appropriate measures shall be taken to ensure confidentiality and integrity for data being sent to other Member States, including their encryption.
4. 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 these measures comply with international standards such as ISO 17025.
5. Member States shall use Member State codes in accordance with the ISO 3166-1 alpha-2 standard.

Article 8

Rules for requests and answers in connection with DNA data

1. A request for an automated search or comparison, as referred to in Articles 3 or 4 of Decision 2008/.../JHA, shall include only the following information:
 - (a) the Member State code of the requesting Member State;
 - (b) the date, time and indication number of the request;
 - (c) DNA profiles and their reference numbers;
 - (d) the types of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles);and
 - (e) information required for controlling the database systems and quality control for the automatic search processes.

2. The answer (matching report) 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 (hits) or no matches (no hits);
- (b) the date, time and indication number of the request;
- (c) the date, time and indication number of the answer;
- (d) the Member State codes of the requesting and requested Member States;
- (e) the reference numbers of the requesting and requested Member States;
- (f) the type of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles);
- (g) the requested and matching DNA profiles; and
- (h) information required for controlling the database systems and quality control for the automatic search processes.

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. This minimum is set out in Chapter 1 of the Annex to this Decision.

4. The Member States shall ensure that requests comply with the declarations issued in accordance with Article 2(3) of Decision 2008/.../JHA. These declarations shall be reproduced in the Manual referred to in Article 18(2) of this Decision.

Article 9

**Transmission procedure for automated search of unidentified DNA profiles
in accordance with Article 3 of Decision 2008/.../JHA**

1. If, in a search with an unidentified DNA profile, no match has been found in the national database or a match has been found with an unidentified DNA profile, the unidentified DNA profile may then be transmitted to all other Member States' databases and if, in a search with this unidentified DNA profile, matches are found with reference DNA profiles and/or unidentified DNA profiles in other Member States' databases, these matches shall be automatically communicated and the DNA reference data transmitted to the requesting Member State; if no matches can be found in other Member States' databases, this shall be automatically communicated to the requesting Member State.
2. If, in a search with an unidentified DNA profile, a match is found in other Member States' databases, each Member State concerned may insert a note to this effect in its national database.

Article 10

**Transmission procedure for automated search of reference DNA profiles
in accordance with Article 3 of Decision 2008/.../JHA**

If, in a search with a reference DNA profile, no match has been found in the national database with a reference DNA profile or a match has been found with an unidentified DNA profile, this reference DNA profile may then be transmitted to all other Member States' databases and if, in a search with this reference DNA profile, matches are found with reference DNA profiles and/or unidentified DNA profiles in other Member States' databases, these matches shall be automatically communicated and the DNA reference data transmitted to the requesting Member State; if no matches can be found in other Member States' databases, it shall be automatically communicated to the requesting Member State.

Article 11

**Transmission procedure for automated comparison of unidentified DNA profiles
in accordance with Article 4 of Decision 2008/.../JHA**

1. If, in a comparison with unidentified DNA profiles, matches are found in other Member States' databases with reference DNA profiles and/or unidentified DNA profiles, these matches shall be automatically communicated and the DNA reference data transmitted to the requesting Member State.
2. If, in a comparison with unidentified DNA profiles, matches are found in other Member States' databases with unidentified DNA profiles or reference DNA profiles, each Member State concerned may insert a note to this effect in its national database.

CHAPTER 4

DACTYLOSCOPIC DATA

Article 12

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 specified in Chapter 2 of the Annex to this Decision.
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 (AFIS).
3. The transmission procedure for the exchange of dactyloscopic data shall take place within a decentralised structure.
4. Appropriate measures shall be taken to ensure the confidentiality and integrity of dactyloscopic data being sent to other Member States, including their encryption.
5. The Member States shall use Member State codes in accordance with the ISO 3166-1 alpha-2 standard.

Article 13

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 submit declarations as referred to in Article 18(2) to the General Secretariat of the Council in which they lay down their maximum search capacities per day for dactyloscopic data of identified persons and for dactyloscopic data of persons not yet identified.
2. The maximum numbers of candidates accepted for verification per transmission are set out in Chapter 2 of the Annex to this Decision.

Article 14

Rules for requests and answers in connection with dactyloscopic data

1. The requested Member State shall check the quality of the transmitted dactyloscopic data without delay by a fully automated procedure. Should the data be unsuitable for an automated comparison, the requested Member State shall inform the requesting Member State without delay.
2. The requested Member State shall conduct searches in the order in which requests are received. Requests shall be processed within 24 hours by a fully automated procedure. The requesting Member State may, if its national law so prescribes, ask for accelerated processing of its requests and the requested Member State shall conduct these searches without delay. If deadlines cannot be met for reasons of *force majeure*, the comparison shall be carried out without delay as soon as the impediments have been removed.

CHAPTER 5
VEHICLE REGISTRATION DATA

Article 15

Principles of automated searching of vehicle registration data

1. For automated searching of vehicle registration data Member States shall use a version of the European Vehicle and Driving Licence Information System (EUCARIS) software application especially designed for the purposes of Article 12 of Decision 2008/.../JHA, and amended versions of this software.
2. Automated searching of vehicle registration data shall take place within a decentralised structure.
3. The information exchanged via the EUCARIS system shall be transmitted in encrypted form.
4. The data elements of the vehicle registration data to be exchanged are specified in Chapter 3 of the Annex to this Decision.
5. In the implementation of Article 12 of Decision 2008/.../JHA, Member States may give priority to searches related to combating serious crime.

Article 16

Costs

Each Member State shall bear the costs arising from the administration, use and maintenance of the EUCARIS software application mentioned in Article 15(1).

CHAPTER 6

POLICE COOPERATION

Article 17

Joint patrols and other joint operations

1. In accordance with Chapter 5 of Decision 2008/.../JHA, in particular with the declarations submitted pursuant to its Articles 17(4), 19(2), and 19(4), each Member State shall designate one or more contact points to allow other Member States to address competent authorities and may specify its procedures for setting up joint patrols and other joint operations, its procedures for initiatives from other Member States with regard to those operations, as well as other practical aspects, and operational modalities in relation to those operations.
2. The General Secretariat of the Council shall compile and keep up to date the list of the contact points and inform the competent authorities about any change to the list.
3. An initiative for the setting up of a joint operation may be made by the competent authorities of each Member State. Before the start of a specific operation, the competent authorities referred to in paragraph 2 shall make written or verbal arrangements that may cover details such as
 - (a) the competent authorities of the Member States for the operation;
 - (b) the specific purpose of the operation;
 - (c) the host Member State where the operation takes place;
 - (d) the geographical area of the host Member State where the operation takes place;
 - (e) the period covered by the operation;
 - (f) the specific assistance to be provided by the seconding Member State(s) to the host Member State, including officers or other officials, material and financial elements;
 - (g) the officers participating in the operation;
 - (h) the officer in charge of the operation;
 - (i) the powers the officers and other officials of the seconding Member State(s) may exercise in the host Member State during the operation;
 - (j) the particular arms, ammunition and equipment the seconding officers may use during the operation in accordance with Decision 2008/.../JHA;
 - (k) the logistic modalities as regards transport, accommodation and security;
 - (l) the allocation of the costs of the joint operation if it differs from that provided in the first sentence of Article 34 of Decision 2008/.../JHA;
 - (m) any other possible elements required.

4. The declarations, procedures and designations provided for in this Article shall be reproduced in the Manual referred to in Article 18(2).

CHAPTER 7

FINAL PROVISIONS

Article 18

Annex and Manual

1. Further details concerning the technical and administrative implementation of Decision 2008/.../JHA are set out in the Annex to this Decision.
2. A Manual shall be prepared and kept up to date by the General Secretariat of the Council, comprising exclusively factual information provided by the Member States through declarations made pursuant to Decision 2008/.../JHA or this Decision or through notifications made to the General Secretariat of the Council. The Manual shall be in the form of a Council Document.

Article 19

Independent data protection authorities

Member States shall, in accordance with Article 18(2) of this Decision, inform the General Secretariat of the Council of the independent data protection authorities or the judicial authorities as referred to in Article 30(5) of Decision 2008/.../JHA.

Article 20

Preparation of decisions referred to in Article 25(2) of Decision 2008.../JHA

1. The Council shall take a decision referred to in Article 25(2) of Decision 2008/.../JHA on the basis of an evaluation report which shall be based on a questionnaire.
2. With respect to the automated data exchange in accordance with Chapter 2 of Decision 2008.../JHA, the evaluation report shall also be based on an evaluation visit and a pilot run that shall be carried out when the Member State concerned has informed the General Secretariat in accordance with the first sentence of Article 36(2) of Decision 2008/.../JHA.
3. Further details of the procedure are set out in Chapter 4 of the Annex to this Decision.

Article 21

Evaluation of the data exchange

1. An evaluation of the administrative, technical and financial application of the data exchange pursuant to Chapter 2 of Decision 2008/.../JHA, and in particular the use of the mechanism of Article 15(5), shall be carried out on a regular basis. The evaluation shall relate to those Member States already applying Decision 2008/.../JHA at the time of the evaluation and shall be carried out with respect to the data categories for which data exchange has started among the Member States concerned. The evaluation shall be based on reports of the respective Member States.
2. Further details of the procedure are set out in Chapter 4 of the Annex to this Decision.

Article 22

Relationship with the Implementing Agreement of the Prüm Treaty

For the Member States bound by the Prüm Treaty, the relevant provisions of this Decision and its Annex once fully implemented shall apply instead of the corresponding provisions contained in the Implementing Agreement of the Prüm Treaty. Any other provisions of the Implementing Agreement shall remain applicable between the contracting parties of the Prüm Treaty.

Article 23

Implementation

Member States shall take the necessary measures to comply with the provisions of this Decision within the periods as referred to in Article 36(1) of Decision 2008/.../JHA.

Article 24

Application

This Decision shall take effect twenty days following its publication in the Official Journal of the European Union.

Done at,

For the Council

The President
