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NOTE

from : Council secretariat

Subject : Administrative and technical implementing Agreement to the Prüm Convention

Delegations will find attached, for their information, the Implementing Agreement of the Treaty 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, signed in Prüm, Germany, on 27 May 2005.

Implementing Agreement

of the Treaty 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, signed in Prüm, Germany, on 27 May 2005.

Section 1: Scope and definitions

1. Scope

According to article 44 of the Treaty, the scope of this Implementing Agreement is to decide the necessary provisions for the administrative and technical implementation and application of the Treaty.

2. Definitions

For the purpose of this Implementing Agreement:

- 2.1 “Treaty” means the Treaty 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, signed in Prüm, Germany, on 27 May 2005;
- 2.2 “Party” means a Contracting Party of the Treaty which has signed the present Implementing Agreement;
- 2.3 the procedures of “search”, “comparison” or “searches by comparing” as referred to in articles 3, 4 and 9 of the Treaty means the procedures by which it is established whether there is a match between respectively DNA data or dactyloscopic data, which has been communicated by one Party, with the DNA data or the dactyloscopic data stored in the data bases of one, more, or all of the other Parties;
- 2.4 “DNA profile” means a letter or a number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, i.e. the particular chemical form at the various DNA locations (loci);

- 2.5 “non-coding part of DNA” means chromosome zones containing no genetic expression, i.e. not known to provide information about specific hereditary characteristics;
- 2.6 “DNA reference data” means a DNA profile and the linked non DNA specific data;
- 2.7 “non DNA specific data” comprises:
- 2.7.1 an identification code or number allowing, in case of a match, the Parties to retrieve personal data and / or other information in their databases in order to supply it to one, more or all of the other Parties, pursuant to article 5 of the Treaty;
- 2.7.2 a Party code to indicate the national origin of the DNA profile, and
- 2.7.3 a code to indicate the type of DNA profile as declared by the Parties according to article 2 paragraph 2 of the Treaty;
- 2.8 “unidentified DNA profile” means the DNA profile obtained from stains stemming from the investigation of criminal offences and belonging to a not yet identified person;
- 2.9 “reference DNA profile“ is used as a technical expression and means the DNA profile of an identified person included in the national DNA analysis files according to article 2 paragraph 3 of the Treaty;
- 2.10 “dactyloscopic data” means fingerprint images, images of fingerprint latents, palm prints, palm print latents as well as templates of such images (minutiae), as far as they are stored and dealt with in an automated database;
- 2.11 “follow-up request” means the request addressed by one Party to one, more or all of the other Parties in case of a match of compared DNA or dactyloscopic data, in order to obtain further personal data and other information according to articles 5 and 10 of the Treaty;

- 2.12 “vehicle registration data” means the data-set as specified in Annex C.1 on which the Parties agreed to make them mutually available for an automated search procedure as defined in point 2.13 hereafter;
- 2.13 “automated searching” means an online access procedure in order to consult, in accordance with article 33 paragraph 1, point 2 of the Treaty, the databases of one, more or all of the other Parties;
- 2.14 “the system ex article 12” means all technical measures and functional aspects, such as network, interfaces and security issues, established for the exchange of vehicle register data according to article 12 of the Treaty;
- 2.15 “EUCARIS” means the European Vehicle and Driving License Information System as established by the relevant Treaty, signed in Luxembourg on the 29th June 2000;
- 2.16 “individual cases”, as referred to in article 3 paragraph 1, article 9 paragraph 1 and article 12 paragraph 1 of the Treaty, means one single investigation or prosecution file; if such a file contains more than one DNA profile, dactyloscopic data or vehicle register data, they may be, respectively, transmitted together as one search query;
- 2.17 “reason for search or supply of data” means for the application of article 39 of the Treaty, an indication which enables to establish a clear link between a particular request and the corresponding individual case which gave rise to the request;
- 2.18 “TESTA II communication network” means the “Trans European Services for Telematics between Administrations” managed by the European Commission, as well as any modified version of it.

Section 2: DNA profiles

3. Composition and comparison of DNA profiles

- 3.1 For the purpose of the implementation of article 2 of the Treaty, the DNA reference data which are to be exchanged under the terms of the Treaty are composed of a DNA profile and the non DNA specific data.
- 3.2 A set of common technical specifications, including matching rules, algorithms and Parties code numbers, as defined in Annexes A, will be implemented and deployed at the national contact points of the Parties and will be applied to all queries and answers related to searches and comparisons of DNA profiles, as referred to in point 3.1.
- 3.3 DNA profiles will be compared on the basis of shared markers as defined in Annex A.1. Any DNA profile transmitted for automated search or comparison by the requesting Party will be compared with any DNA profile made available by the requested Parties pursuant to article 2 paragraphs 2 and 3 of the Treaty.
- 3.4 The Parties make use of existing standards such as the European Standard Set (ESS) or the Interpol Standard Set of Loci (ISSOL).

4. DNA requesting and reporting rules

- 4.1 The query for an automated search or comparison, as referred to in articles 3 and 4 of the Treaty, solely includes the following information:
- 4.1.1 the Party code of the requesting Party;
- 4.1.2 the date, the time and the reference number of the query;
- 4.1.3 the DNA profiles and their non DNA specific data;
- 4.1.4 the type of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles).

- 4.2 The Parties do the necessary so that queries are in full compliance with the conditions imposed by the declarations referred to article 2 paragraph 3 of the Treaty and reproduced in Annex A.3.
- 4.3 The answer (matching report) to the query referred to in point 4.1 will be sent to the national contact point of the requesting Party in order to determine if a follow-up request may be made. A matching report contains solely the following information:
- 4.3.1 the indication whether there was one or more matches (hit) or not (no hit);
 - 4.3.2 the date, the time and the reference number of the query;
 - 4.3.3 the date, the time and the reference number of the answer;
 - 4.3.4 the Party code of the requested Party;
 - 4.3.5 the non DNA specific data of the requesting and the requested Party;
 - 4.3.6 the type of DNA profiles transmitted (unidentified DNA profiles or reference DNA profiles);
 - 4.3.7 in the case of a comparison according to article 4 of the Treaty, the matched DNA profile.
- 4.4 Automated notification of a hit is only provided on condition that the automated search or comparison has resulted in a match of a minimum of loci as set out in Annex A.1. In the case of a searching according to article 3 of the Treaty, for verification purposes, national contact points of the Parties shall take appropriate measures in compliance with their national law.

5. Communication network for transmission of DNA data

The electronic exchange of DNA related data amongst the Parties are deployed by the use of the “TESTA II” communication network according to the technical specifications as set out in Annex A.5.

6. Quality control measures

The Parties take appropriate measures to guarantee the integrity of the DNA profiles made available to the other Parties or transmitted for comparison. These measures shall be in compliance with international standards, such as ISO 17025. The forensic aspects of these DNA profiles have to comply with the specifications set forth in Annex A.1.

Section 3: Dactyloscopic data

7. Transmission of dactyloscopic data

- 7.1 For the purpose of the implementation of article 9 of the Treaty, the Parties establish a mutually accessible technical entry to their “automated fingerprint identification systems” (called hereafter “AFIS”).
- 7.2 The systems mentioned in point 7.1 only include automated dactyloscopic identification systems established for the prevention and investigation of criminal offences. Data from administrative files must not be transmitted.
- 7.3 The digitalisation of dactyloscopic data and its transmission to other Parties is carried out according to the data format specified in the “Interface Control Document (ICD)” as defined in Annex B.1. Each Party ensures that the dactyloscopic data transmitted by the other Parties can be compared with the reference data of its own AFIS.
- 7.4 The references as referred to in article 9 of the Treaty allow the univocal correspondence to a person or a criminal case, as well as the identification of the requesting Party.

8. Search and transmission of results

- 8.1 The Parties ensure that the transmitted dactyloscopic data is of a suitable quality for a comparison by AFIS. The requested Party checks the quality of the transmitted dactyloscopic data without delay by a fully automated procedure. In case of data being not suitable for an automated comparison, the requested Party informs the requesting Party without delay.
- 8.2 The requested Party conducts the searches in the order in which requests were received. Requests have to be processed within 24 hours by a fully automated procedure. The requesting Party may, if its national law so demands, ask for an accelerated processing of these searches. The requested Party conducts these searches without delay. If deadlines cannot be met for reasons the requested Party is not responsible, the comparison need to be carried out without delay as soon as the impediments have been removed.
- 8.3 The requested Party takes care that the system is able to transmit in a fully automated way any hit or no-hit without delay to the requesting Party. In case of a hit, it transmits the dactyloscopic data and the references referred to in article 9 paragraph 2 of the Treaty for all matches between dactyloscopic data.

9. Communication network for transmission of dactyloscopic data

The electronic exchange of dactyloscopic related data between the Parties have to be executed by the use of the “TESTA II” communication network, according to the technical specifications as set out in Annex A.5.

10. Definition and capacities of automated searching of dactyloscopic data

- 10.1 The maximum amount of the different types of dactyloscopic data (candidates) accepted for verification per transmission is set out in Annex B.2.
- 10.2 The maximum research capacities per day for dactyloscopic data of identified persons of each Party are set out in Annex B.3.
- 10.3 The maximum research capacities per day for dactyloscopic traces of each Party are set out in Annex B.4.

Section 4: Vehicle registration data

11. Search procedure and transmission of data

- 11.1 For the purpose of article 12 of the Treaty, the Parties set up a network of national contact points in order to conduct automated searches in their respective vehicle registration data bases. The technical conditions of the data exchange are set out in Annex C.3.
- 11.2 Without prejudice to the Treaty's provisions, and taking into account specifically the provisions of articles 38 and 39, the Parties, acting respectively as requesting or requested Party, organise the mode of operation of their national contact points, in good faith to the Treaty's provisions and principles.
- 11.3 The Parties opting for an entirely automated requesting procedure have to assure that all their requests have to pass through their national contact point provided for by the Treaty, which has to be under the supervision of a responsible officer.

12. Communication network for transmission of vehicle registration data

12.1 As a means for the electronic exchange of vehicle registration data, the Parties decide to use the “TESTA II” communication network and a for the purposes of the system ex article 12 especially designed EUCARIS software application, as well as any modified version of both systems.

12.2 All costs to be shared emanating from the management and the use of the system ex article 12, including the costs related to the EUCARIS technology, have to be discussed and agreed upon on an annual basis.

13. Technical and organisational measures to protect personal data and data security

The technical specifications of the automated search, as referred to in article 38 paragraph 2 of the Treaty, concerning data protection, security, confidentiality and integrity, the network encryption and authorisation procedures as well as the checking procedures for the admissibility of automated searches are detailed in Annex C.2.

Section 5: Police cooperation

14. Joint operations

By mission statement, two or more Parties may set up a joint operation as referred to in article 24 of the Treaty. Before the start of the operation, they make written or verbal arrangements about the operational modalities, such as:

- a) the competent authorities of the Parties to the mission statement;
- b) the specific purpose of the operation;
- c) the host State where the operation takes place;
- d) the geographical area of the host State where the operation takes place;
- e) the period covered by the operation mission statement;

- f) the specific assistance to be provided by the seconding State to the host State, including officers or other officials, material and financial elements;
- g) the officers participating in the operation;
- h) the officer who will be in charge of the operation;
- i) the powers the officers and other officials of the seconding State may exercise in the host Party during the operation;
- j) the particular arms, ammunition and equipment the seconding officers may use during the operation in accordance to the rules laid out in Annex D.3;
- k) the logistic modalities concerning transport, accommodation and security;
- l) the bearing of costs of the joint operation if it differs from the provision of article 46 of the Treaty;
- m) any other possible elements required.

14.2 A request for the setting up of a joint operation may be made by the competent authorities of any of the Parties. In Annex D.1, each Party may set out the procedures for incoming requests. If there is no fixed procedure, a national contact point according to Annex D.1 is identified that can help the other Parties to address their requests to the competent authorities.

15. Cross-border operations in the event of imminent danger

15.1. The authorities to be notified without delay, as stipulated in article 25 paragraph 3 of the Treaty, are set out in Annex D.2.

15.2 Any modification of the contact details of these authorities is communicated as soon as possible to the contact points of the other Parties listed also in Annex D.2.

16. The carrying and use of arms, ammunition and equipment

In Annex D.3, each Party lists the particular arms, ammunition and equipment which are prohibited to be carried, according to article 28 paragraph 1, 3rd phrase of the Treaty, the particular arms, ammunition and equipment which are prohibited to be used and the legal aspects according to article 28 paragraph 2 of the Treaty, as well as the practical aspects according to article 28 paragraph 5 of the Treaty.

Section 6: General provisions

17. Evaluation of the application and the implementation of the Treaty and the Implementing Agreement

17.1 The evaluation of the administrative and technical application and implementation of the Treaty and the Implementing Agreement is executed by the Joint Working Group as provided for in article 43 paragraph 2 of the Treaty, or by any specific technical working group mandated for this purpose by the Joint Working Group. Such an evaluation may be executed at the request of any of the Parties.

17.2 The modalities of the automated searching and comparison of DNA and dactyloscopic data will be evaluated, unless otherwise decided upon by the Joint Working Group, six months after the beginning with activities on the basis of this Implementing Agreement. For vehicle registration data, this first evaluation will take place three months after the beginning with activities. Subsequently, such evaluations may take place at the request of any Party according to article 43 of the Treaty.

17.3 The bodies responsible for recording under article 39 paragraph 2 of the Treaty shall carry out random checks in such a frequency and to the extent necessary to ensure an effective evaluation of the lawfulness of automated searches carried out according to articles 3, 9 and 12 of the Treaty by the respective foreign contact points.

18. Availability of automated data exchange

The Parties provide all reasonable efforts to maintain upright the automated on-line exchange of DNA, dactyloscopic and vehicle register data on the basis of a 24 hours per day and 7 days per week availability. In case of a technical failure, the relevant contact points of the Parties inform each other as soon as possible and agree upon a temporary alternative mean of communication, according to any other applicable legal instrument. The automated exchange of data has to be restored as quickly as possible.

19. Modification of the Implementing Agreement and its Annexes

19.1 Modifications to this Implementing Agreement and its Annexes may be proposed by any Party. Such proposals are communicated to all other Parties.

19.2 If the proposed modification relates to the provisions of the Implementing Agreement, it is adopted by a Decision of the Committee of Ministers according to article 43 paragraph 1 of the Treaty.

19.3 If the proposed modification relates to one or more of the Annexes of the Implementing Agreement, it is adopted by the Joint Working Group provided for in article 43 paragraph 2 of the Treaty.

19.4 For the purpose of the modification of this Implementing Agreement or its Annexes, unanimity is reached when the attendant and represented Parties agree on the proposed modification. Consequently, absent and not represented Parties do not prevent the adoption of a modification of the Implementing Agreement. Such a modification applies to all Parties.

20. Taking effect; Signing; Depositary

20.1 For the Parties for which the Treaty entered into force, this Implementing Agreement takes effect after its signature, as well as the adoption of the necessary Decisions provided for in article 34 paragraph 2 of the Treaty. For the other Parties, it will take effect according to article 50 paragraph 1, respectively article 51 paragraph 1, of the Treaty and after the adoption of the necessary Decisions provided for in article 34 paragraph 2 of the Treaty.

20.2 This Implementing Agreement, with its Annexes, will be signed in the German, Spanish, French, Dutch and English languages, which are all equally authentic.

20.3 The Government of the Federal Republic of Germany acts as depositary for this Implementing Agreement and its Annexes.

Brussels, the 5 December 2006

For the Kingdom of Belgium

For the Federal Republic of Germany

For the Kingdom of Spain

For the French Republic

For the Grand Duchy of Luxembourg

For the Kingdom of the Netherlands

For the Republic of Austria