

Prüm Treaty: stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime. Initiative Belgium, Bulgaria, Germany, Spain, France, Luxembourg, the Netherlands, Austria, Slovenia, Slovakia, Italy, Finland, Portugal, Romania and Sweden

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Opinion of the European Data Protection Supervisor (EDPS)

This opinion will take into account the unique nature of the initiative, more specifically the fact that major amendments in the substance of the provisions are not foreseen. The EDPS will therefore focus on a number of more general issues related to the initiative and its context. The amendments the EDPS proposes mainly serve to improve the text without modifying the system of information exchange itself.

The EDPS:

- welcomes that the present initiative takes a more cautious, gradual approach as a way of implementing the principle of availability. However, he regrets the fact that the initiative does not harmonise essential elements of the collection and exchange of the different kinds of data included in the initiative, needed to ensure compliance with the principles of necessity and proportionality;
- regrets the fact that the present initiative is taken without a proper impact assessment. He calls on the Council to include such an assessment in the adoption procedure and to examine, as part of this assessment, other possibly less privacy-intrusive policy options;
- supports the approach of the initiative relating to the different kinds of personal data: the more sensitive the data, the more limited the purposes for which they can be used and the more limited the access;
- regrets the fact that the initiative does not specify the categories of persons that will be included in the DNA databases and that it does not limit the retention period.

The EDPS believes that this Decision should not be adopted before the adoption of a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, offering an appropriate level of protection. He also believes that the provisions on data protection in Chapter 6 of the initiative do not facilitate the exchange of personal data but enhance the complexity of this exchange, in so far as they build on the traditional notion of mutual legal assistance in criminal matters.

The EDPS recommends the following amendments to the text of the initiative:

- including in Article 1 a reference to Chapter 6 on data protection;
- including a definition of non-coding part of DNA, as well as providing for a procedure ensuring that, both today and in the future, no more information can be revealed from the non-coding part;
- specifying the text of article 7 (collection of cellular matters and supply of DNA profiles), taking into account that the principle of proportionality requires a more limited interpretation of this article;
- including a definition of personal data in Article 24;
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- specifying in Article 24 (2) that Chapter 6 applies to the collection and processing of DNA material and fingerprints in a Member State and that also the supply of further personal data within the scope of this decision is covered;
- summarising article 24 (2) as follows: “the provisions (on data protection) apply to data which are or have been supplied pursuant to the decision”, deleting the provision “save as otherwise provided in the preceding Chapters”;
- modifying Article 30 on logging, in order to ensure that all activities relating to those data are logged;
- modifying Article 31 (the right to information and compensation), so as to guarantee the right to information without need for a request;
- including in Chapter 6 a separation of data relating to different categories of people (victims, suspects, other people whose data are included in a database);
- adding a sentence to Article 34 stating that the Council shall consult the EDPS before the adoption of such an implementing measure;
- including an evaluation clause in Chapter 7 (final provisions and implementation).

More generally, the EDPS recommends that the Council deals with the shortcomings of the initiative, either by amending the text of the initiative and/or by including these elements in a Council Framework Decision on data protection in the third pillar. In the view of the EDPS, the first option (relating to the elements mentioned in the preceding point) does not necessarily lead to a modification of the system of information exchange itself and does not contradict the intention of the 15 Member States that took the initiative not to change the essential parts of the Prüm Treaty.