



# Procedure file

Basic information	
CNS - Consultation procedure Decision	2007/0821(CNS) Procedure completed
Cross-border cooperation to combat terrorism and cross-border crime, implementation of the Prüm Treaty. Initiative Germany	
See also <a href="#">2019/0012(NLE)</a> See also <a href="#">2019/0013(NLE)</a>	
Subject 7.30.05 Police cooperation 7.30.20 Action to combat terrorism 7.30.30 Action to combat crime	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		29/11/2007
Council of the European Union	Council configuration	PSE <a href="#">DÜHRKOP DÜHRKOP</a> <a href="#">Bárbara</a>	
	<a href="#">Agriculture and Fisheries</a>	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2881</a>	23/06/2008
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>	FRATTINI Franco	06/12/2007

Key events			
29/10/2007	Legislative proposal published	<a href="#">11563/2007</a>	Summary
15/11/2007	Committee referral announced in Parliament		
06/12/2007	Debate in Council	<a href="#">2838</a>	
27/03/2008	Vote in committee		Summary
02/04/2008	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0099/2008</a>	
21/04/2008	Debate in Parliament		
22/04/2008	Results of vote in Parliament		
22/04/2008	Decision by Parliament	<a href="#">T6-0128/2008</a>	Summary
23/06/2008	Act adopted by Council after consultation of Parliament		
23/06/2008	End of procedure in Parliament		
06/08/2008	Final act published in Official Journal		

Technical information
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Procedure reference	2007/0821(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
	See also <a href="#">2019/0012(NLE)</a> See also <a href="#">2019/0013(NLE)</a>
Legal basis	Treaty on the European Union (after Amsterdam) M 030-p1; EC Treaty (after Amsterdam) EC 037; EC Treaty (after Amsterdam) EC 300-p2; Treaty on the European Union (after Amsterdam) M 032; Treaty on the European Union (after Amsterdam) M 034-p2c; Treaty on the European Union (after Amsterdam) M 031-p1-aa; EC Treaty (after Amsterdam) EC 175-p1
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/56115

### Documentation gateway

Legislative proposal	<a href="#">11563/2007</a>	30/10/2007	CSL	Summary
Document attached to the procedure	52008XX0410(01) <a href="#">OJ C 089 10.04.2008, p. 0001</a>	19/12/2007	EDPS	Summary
Supplementary legislative basic document	<a href="#">05660/2008</a>	04/02/2008	CSL	Summary
Committee draft report	<a href="#">PE400.673</a>	14/02/2008	EP	
Amendments tabled in committee	<a href="#">PE402.905</a>	07/03/2008	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0099/2008</a>	02/04/2008	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T6-0128/2008</a>	22/04/2008	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2008)3169</a>	28/05/2008	EC	

### Additional information

European Commission	<a href="#">EUR-Lex</a>
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### Final act

<a href="#">Decision 2008/616</a> <a href="#">OJ L 210 06.08.2008, p. 0012</a> Summary
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## Cross-border cooperation to combat terrorism and cross-border crime, implementation of the Prüm Treaty. Initiative Germany

**PURPOSE:** to step up cross-border cooperation in combating terrorism and cross-border crime within the context of the Prüm Treaty?.

**PROPOSED ACT:** Council Decision. Initiative of the Federal Republic of Germany.

**BACKGROUND:** in May 2005 seven of the EU Member States (Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria) signed the Prüm Treaty the purpose of which is to step up cross-border cooperation in the field of terrorism, crime and illegal migration. Subsequent provisions specify that the Council is to adopt implementing measures in accordance with the Implementing Agreement concerning the administrative and technical implementation and application of the Prüm Treaty?.

**CONTENT:** the purpose of this proposal, therefore, is to establish common provisions deemed indispensable for the administrative and technical implementation of the Prüm Treaty. Technical specifications are set out in Annex to the proposed Decision. Specifically, the proposed Decision concerns: DNA data, dactyloscopic data; and vehicle registration data. Provisions have also been spelt out with regard to

data exchange (e.g. use of the TESTA II communications network); as well as the availability of automated data exchange.

**DNA Data:** the proposal states that Member States should use existing standards for DNA data exchange (the European Standard Set as well as Interpol's Standard Set of Loci). Transmission should take place within a decentralised structure and appropriate measures must be taken to ensure confidentiality, including their inscription. Codes must be in accordance with the ISO 3166-1 alpha-2 standard. Details concerning: requests and answers; transmission of unidentified DNA profiles, automated search and comparisons of unidentified DNA profiles, are also set out.

**Dactyloscopic Data:** according to the proposal, the digitalisation of dactyloscopic data and their transmission to other Member States must be done in a uniform format (set out in Annex to the Decision). Each Member State must ensure that this data is transmitted to allow for comparison by the automated fingerprint identification systems (AFIS). Transmission must take place within a decentralised structure and appropriate measures must be taken to ensure the confidentiality and integrity of the data being sent, including their encryption. Codes must be in accordance with the ISO 3166-1 alpha-2 standard. Details concerning search capacities as well as procedures for requests and answers are also set out.

**Vehicle registration data:** for automated searching of vehicle registration data the Member States are to use a version of the European Vehicle and Driving Licence Information System (EUCARIS) software application. Searches for this kind of data should take place within a decentralised structure and the information exchanges on the EUCARIS system should be transmitted in encrypted form. In the event of limited technical capacities Member States should give priority to searches relating to serious crime. The cost of utilising the EUCARIS software application will be shared between the participating Member States.

**Police Cooperation:** the proposal specifies that each Member State may specify its procedures for setting up joint operations; for incoming requests from other Member States; and practical aspects and operation modalities in relation to those operations. Contact points may be set up for requests regarding joint operations. Written or verbal arrangements may cover details such as: competent authorities for the operation; the specific purpose of the operation; where it is to take place; the period covered; the specific assistance to be provided by seconding Member States (officers etc.); the officer in charge of the operation; the powers of the officers of the seconding Member States; the particular arms, ammunition and equipments to be used of seconding officers during the operation; the logistical modalities regarding transport, accommodation and security; and the allocation of costs for joint operations.

On a final point a Manual will be prepared and kept up to date by the General Secretariat of the Council that comprises exclusively of factual information provided by the Member States through declarations. The Manual will be in the form of a Council Document.

## Cross-border cooperation to combat terrorism and cross-border crime, implementation of the Prüm Treaty. Initiative Germany

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OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the Initiative of the Federal Republic of Germany, with a view to adopting a Council Decision on the implementation of Decision 2007/?/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

The EDPS was not asked for advice on this initiative for an implementing decision. Therefore he issues this opinion on his own initiative.

The EDPS recommends that the initiative and its Annex be openly discussed by effectively profiting from the contributions of all institutional actors. It calls on the legislator to ensure that a clear, effective and comprehensive legal framework with regard to data protection - combining different legal instruments with general provisions and specific guarantees - is in place before the current initiative enters into force.

In this perspective, the EDPS reiterates that the Council decisions on Prüm should not enter into force before Member States have implemented a general framework decision on data protection in the third pillar that would be a *lex generalis* on top of which those provisions of the Prüm initiative ensuring specific guarantees and tailored stricter standards should apply.

On the other hand, the legislator should clarify that the specific data protection rules relating to DNA, fingerprints and vehicle registration data in Chapter 6 of the Prüm initiative, are applicable not only to the exchange of these data, but also to their collection, storage and domestic processing, as well as to the supply of further personal data within the scope of the Council decision.

Moreover, the EDPS invites the legislator to properly take into account the scale of the system when further discussing the current initiative, by ensuring that the increase in the number of participating Member States does not entail a decrease in effectiveness.

The EDPS also recommends that the essential advisory role played by relevant data protection authorities be explicitly recognised. Furthermore, the initiative should ensure that Member States provide data protection authorities with the (additional) resources necessary to carry out the supervisory tasks stemming from the implementation of the proposed system and that competent data protection authorities regularly meet at EU level with a view to coordinating their activities and harmonising the application of these instruments.

In addition, the EDPS calls upon the legislator once more to introduce a clear and inclusive definition of personal data. In this perspective, the implementing provisions should also clarify the applicability of data protection rules to unidentified DNA profiles.

The EDPS recommends that, in the context of automated searches and comparisons, accuracy of the matching process is duly taken into account (e.g. with regard to fingerprints, the initiative should harmonise as much as possible the different automated fingerprint identification systems (AFIS) in use in the Member States and the way these systems are used, in particular with regard to false rejection rates).

Lastly, the EDPS suggests that specific emphasis be given to the evaluation of data protection aspects of data exchanges, with specific attention to purposes for which data have been exchanged, methods of information of data subjects, accuracy of exchanged data and false matches, requests of access to personal data, length of storage periods and effectiveness of security measures. In this context, relevant data protection authorities and experts should be duly involved.

## Cross-border cooperation to combat terrorism and cross-border crime, implementation of the Prüm Treaty. Initiative Germany

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In November 2007, the Council agreed on a general approach concerning the main part of the draft Council Decision on the implementation of the JHA Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime. Subsequently, a Friends of the Presidency group was convened to discuss the Annex to this draft Decision and proceeded with a detailed examination of the annex based, among other things, on comments sent in by delegations. These discussions resulted in a revised proposal.

Minor drafting amendments have been made in Chapter 1 (DNA data) to clarify and/or correct a number of issues. The UK delegation has a reservation on this chapter pending further discussions between experts on specific points.

Among the outstanding points raised by the UK delegation, the main issue concerns the kind and number of loci necessary to do a comparison according to the Prüm Decision. It is evident that the accuracy of matches is enhanced by using a higher number of loci and comparisons should therefore be based on as many loci as possible. At the same time, it should be avoided that some older databases are excluded from comparisons by defining the comparison rules at too high a level.

The aim is to ensure that the comparison is made on the basis of the highest number of loci that is technically possible between the concerned databases but to allow for a lower set of criteria where this is necessary to make comparisons with some older databases.

In reaction to comments of delegations and/or to clarify some drafting, minor amendments and clarifications have been made in Chapters 2 (Dactyloscopic Data) and 3 (Vehicle registration data), which have been agreed upon subject to a UK scrutiny reservation.

The UK delegation is invited to lift its reservation on these chapters.

Chapter 4 (Evaluation) has been redrafted so that, while maintaining the original evaluation mechanism (questionnaire, pilot run and evaluation visit), the whole process is less bureaucratic and resource-intensive. Also, the part on expert meetings has been moved to a separate paragraph to allow these meetings to deal with other subjects relating to the implementation of the Prüm Decision than the evaluations. Notably, the model for statistics will be defined by these experts. This chapter has been agreed.

In several instances, reference is made to "the relevant Council Working Group". It is neither necessary nor useful to define in this Annex which Working Group is concerned. This is a matter to be decided upon at a later stage.

Subject to a solution for the issue being found and the lifting of the different reservations, the Article 36 Committee is invited to confirm the agreement on the revised version of the Annex.

## Cross-border cooperation to combat terrorism and cross-border crime, implementation of the Prüm Treaty. Initiative Germany

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drafted by Bárbara DÜHRKOP DÜHRKOP (PES, ES) on the initiative of the Federal Republic of Germany with a view to the adoption of a 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. It made some amendments to the text, in the framework of the consultation procedure. The amendments emphasised the need for a uniform set of procedural guarantees at EU level, and data protection concerns.

The main amendments were as follows:

-a new recital states that the data protection rules laid down in the Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (see [CNS/2007/0804](#)), are to be created in the absence of an adequate third pillar legal instrument on data protection. When approved, that general legal instrument should be applied to the entire area of police and judicial cooperation in criminal matters, provided that its level of data protection is adequate and, in any event, no lower than the protection laid down in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and the Additional Protocol thereto regarding supervisory authorities and trans-border data flows of 8 November 2001;

-special categories of data concerning racial or ethnic origin, political opinion, religious or philosophical belief, party or trade union membership, sexual orientation or health should be processed only if absolutely necessary and in proportion to the purpose of the specific case and in compliance with specific safeguards;

-the measures provided for in the Decision are in accordance with the opinion of the European Data Protection Supervisor of 19 December 2007;

-the Committee inserted the definition of "personal data" given in Article 2(a) of Directive 95/46/EC since the Council decision on Prüm does not contain any clear definition of personal data and this lack persists in the implementing decision;

-it amended the definition of "non-coding part of DNA", which now means chromosome zones containing no genetic expression, i.e. not known to provide information about specific hereditary characteristics; notwithstanding any scientific progress, no more information shall be revealed from the non-coding part of DNA;

-a new clause states that, in accordance with Chapters 3 and 4 of the Decision, reports that match the DNA profile or dactyloscopic data of persons who have been acquitted or discharged shall be exchanged only if the database is precisely circumscribed and the category of data subject to the inquiry is clearly defined by the national law;

-any modification to the Annex shall follow the current procedure provided by the Treaty on European Union which requires the consultation of the European Parliament by the Council;

-the evaluation of the administrative, technical and financial application of the data exchange will be carried out on an annual basis. Such evaluation shall include an assessment of the consequences of differences in techniques and criteria for collecting and storing DNA data in the Members States. The evaluation shall also include an assessment of the results related to the proportionality and the effectiveness of the cross-border exchange of the various types of DNA data. The General Secretariat of the Council shall transmit to the European Parliament and the Commission on a regular basis the results of the evaluation of data exchange in the form of a report.

-lastly, the DNA-profiles must contain at least 6 loci and must (rather than "may") contain additional loci or blanks depending on their availability. In order to raise the accuracy of matches, all available alleles must (rather than "may") be stored in the indexed DNA profile

database and be used for searching and comparison. Each Member State must implement, as soon as practicable, any new ESS of loci adopted by the EU.

## Cross-border cooperation to combat terrorism and cross-border crime, implementation of the Prüm Treaty. Initiative Germany

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The European Parliament adopted by 529 votes to 65 with 24 abstentions, a legislative resolution amending the initiative of the Federal Republic of Germany with a view to the adoption of a 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. The report had been tabled for consideration in plenary by Bárbara DÜHRKOP DÜHRKOP (PES, ES). The amendments emphasised the need for a uniform set of procedural guarantees at EU level, and data protection concerns.

The main amendments ? adopted under the consultation procedure - were as follows:

-a new recital states that the data protection rules laid down in the Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (see [CNS/2007/0804](#)), are to be created in the absence of an adequate third pillar legal instrument on data protection. When approved, that general legal instrument should be applied to the entire area of police and judicial cooperation in criminal matters, provided that its level of data protection is adequate and, in any event, no lower than the protection laid down in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and the Additional Protocol thereto regarding supervisory authorities and trans-border data flows of 8 November 2001;

-special categories of data concerning racial or ethnic origin, political opinion, religious or philosophical belief, party or trade union membership, sexual orientation or health should be processed only if absolutely necessary and in proportion to the purpose of the specific case and in compliance with specific safeguards;

-the measures provided for in the Decision are in accordance with the opinion of the European Data Protection Supervisor of 19 December 2007;

-Parliament inserted the definition of "personal data" given in Article 2(a) of Directive 95/46/EC since the Council decision on Prüm does not contain any clear definition of personal data and this lack persists in the implementing decision;

-it amended the definition of "non-coding part of DNA", which now means chromosome zones containing no genetic expression, i.e. not known to provide information about specific hereditary characteristics; notwithstanding any scientific progress, no more information shall be revealed from the non-coding part of DNA;

-a new clause states that, in accordance with Chapters 3 and 4 of the Decision, reports that match the DNA profile or dactyloscopic data of persons who have been acquitted or discharged shall be exchanged only if the database is precisely circumscribed and the category of data subject to the inquiry is clearly defined by the national law;

-any modification to the Annex shall follow the current procedure provided by the Treaty on European Union which requires the consultation of the European Parliament by the Council;

-the evaluation of the administrative, technical and financial application of the data exchange will be carried out on an annual basis. Such evaluation shall include an assessment of the consequences of differences in techniques and criteria for collecting and storing DNA data in the Members States. The evaluation shall also include an assessment of the results related to the proportionality and the effectiveness of the cross-border exchange of the various types of DNA data. The General Secretariat of the Council shall transmit to the European Parliament and the Commission on a regular basis the results of the evaluation of data exchange in the form of a report.

-lastly, the DNA-profiles must contain at least 6 loci and must (rather than "may") contain additional loci or blanks depending on their availability. In order to raise the accuracy of matches, all available alleles must (rather than "may") be stored in the indexed DNA profile database and be used for searching and comparison. Each Member State must implement, as soon as practicable, any new ESS of loci adopted by the EU.

## Cross-border cooperation to combat terrorism and cross-border crime, implementation of the Prüm Treaty. Initiative Germany

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**PURPOSE:** to establish administrative and technical measures necessary for the implementation of the decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

**LEGISLATIVE ACT:** Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

**CONTENT:** the Council adopted the [Prüm Decision](#) on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

In this context, the decision contains inter alia provisions on the conditions and procedure for:

- the automated transfer of DNA profiles, dactyloscopic data and certain national vehicle registration data;
- the supply of data in connection with major events with a cross-border dimension;
- the supply of information in order to prevent terrorist offences;
- stepping up cross-border police cooperation.

Closer police and judicial cooperation in criminal matters must go hand-in-hand with respect for privacy and protection of personal data, which

are guaranteed by the data protection arrangements laid down in the decision.

This implementing decision lays down administrative and technical provisions as regards in particular the automated exchange of DNA data, dactyloscopic data and vehicle registration data, and other forms of cooperation.

APPLICATION: 26/08/2008.