



## Analysis

# “Complex, technologically fraught and expensive” - the problematic implementation of the Prüm Decision

Chris Jones

**The implementation of the Prüm Treaty has been beset with technical and administrative problems with most Member States still unable to share data. Centralised EU bodies and working groups on information exchange have been created to speed up the implementation process and provide coordination and oversight.**

The Prüm Decisions mandate the exchange of DNA, fingerprint and vehicle registration data (VRD) amongst Member States of the European Union. The Decisions also permit the exchange of personal data for the prevention of terrorist offences and joint operations by police forces of different Member States. 26 August 2011 marked the date by which every EU Member State should have finished making the legal and technical changes required by the Decisions. [1] It is clear that the majority have failed to do so, for a variety of reasons.

As noted in a previous *Statewatch* Analysis:

*The ultimate goal [of Prüm] is to overcome lengthy mutual legal assistance bureaucratic procedures by establishing a single national contact point as an electronic interface for automated information exchange. Traditional channels of legal assistance would only be activated when search data matches a stored entry. Such a “hit” would lead to a request for further information. [2]*

The process of simplifying procedures has turned out to be extraordinarily long-winded and difficult. A December 2012 evaluation by the Polish Presidency concluded that the process has been “complex, technically fraught and expensive.” [3]

Six months after the implementation deadline, the majority of Member States are not yet able to exchange any of the three types of data deemed necessary for dealing with “threats caused by criminals operating within a European Union without internal borders.” [4]

### Uneven implementation

As of March this year, only 13 Member States were engaging in the “operational exchange” of DNA data. [5] This is an increase of just four since October 2010, when a report by the Belgian EU Presidency found that “several Member States have not yet complied in full with the provisions on automated data searching.” [6] Ten Member States are now able to exchange information on

fingerprints (an increase of five since the Belgian report); and ten can now exchange vehicle registration data – an increase of three. [7]

The formal process of complying with the provisions on DNA, fingerprints and VRD is lengthy and convoluted. Requirements include: notification of contact points for the three types of data; details of data protection authorities; a list of national DNA analysis files and conditions for automated searching; maximum search capacities for fingerprint data; and what have been referred to as “lowest common denominator” data protection guarantees. [8] Member States also have to undergo and pass visits from external evaluators. A unanimous decision must then be made by the Council on the readiness of each Member State to undertake information exchange for each type of data.

However, although a Member State may be ready to exchange information on, say, fingerprints, it may not be able to do so with every other Member State. The Prüm system creates a decentralised network of national databases. In order for one Member State to be able to undertake exchanges with every other Member State directly, 26 bilateral interfaces are required. This currently equates to 702 interfaces in total across the EU.

Member States will require one more interface each when Croatia accedes to the EU and becomes the 28th Member State. Norway and Iceland have also agreed to join the Prüm system, which would require two more interfaces per Member State. Austria – which has one of the most developed systems – is currently only able to undertake exchanges of DNA data with 11 other states; and fingerprint and vehicle registration data with nine others.

Lying a long way behind Austria are states such as Estonia, who planned to have installed their Automated Fingerprint Identification System (AFIS) software and hardware by the beginning of January 2012. It is unknown whether this was achieved.

The most recent update from Italy indicates that contracts with the suppliers of their fingerprint system have yet to be finalised. Romania’s most recent submission to the Council states that:

*To date, the interface ANSI/NIST-ITL 1-200 version 4.22b is not yet acquired. However, the interface is a precondition of making AFIS [Automated Fingerprint Identification System] operational. This is supposed to take place 6 months after the acquisition of the interface which is dependent on funding not yet approved. [9]*

In other words, Romania has made almost no progress.

Similar problems exist across Member States for the implementation of the legal and technical aspects of the systems for DNA data exchange. Ireland “does not yet have a fully operational DNA database,” although “legislation underpinning the establishment of the DNA database has been drafted and is awaiting parliamentary review.”

The situation in Ireland exemplifies the effect of EU law to implement significant changes to Member State domestic policy, in this case the establishment of a national DNA database.

A bill published in March 2010 by the then-government, the *Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010* referred specifically to Prüm:

*The main purposes of the Bill are to: ... implement the DNA-related elements of the Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the Prüm Council Decisions). [10]*

However, the election of a new government requires the tabling of new legislation. This will have the same title as the 2010 bill and is scheduled for publication in late 2012, although further delays are possible. It is almost certain that one of its purposes will be the implementation of the Prüm Decisions. The EU may therefore be waiting for quite some time for the Irish state to take up its obligations with regard to DNA data exchange.

In Italy, “technical groups” have begun “working on workflow” but are still waiting for the installation of the Combined DNA Index System (CODIS), a system produced and sold by the USA’s Federal Bureau of Investigation that “blends forensic science and computer technology into an effective tool for solving crime.” [11]

Similar problems exist with the sharing of vehicle registration data. Internal discussions are ongoing in the Czech Republic; Estonia is technically ready but dealing with “administrative problems”; Latvia is undertaking preparatory work, as is Malta; and in Portugal a new car registration information system needs to be implemented before the country can take part in the European Car and Driving Licence Information System (EUCARIS), permitting the exchange of vehicle registration data. This is scheduled to happen in 2012.

The Prüm Decisions also contain provisions on other issues with which some Member States have yet to comply. Contact points for major events have yet to be declared by Ireland, Greece, and Finland. The same three countries are also lacking contact points for the exchange of information related to counter-terrorism. Greece and Malta have yet to notify the General Secretariat of the details of national data protection authorities.

### **The problem of the Principle of Availability**

Key to police, judicial and administrative cooperation in the EU is the creation of continent-wide computer networks and large-scale IT systems. Yet the construction of these systems is – unsurprisingly, for such ambitious projects – frequently beset by technical, legal, linguistic, administrative and political problems.

Access to these systems is meant to be driven by the “Principle of Availability”, according to which there should be as few obstacles as possible standing in the way of an official from one Member State accessing information held by another Member State. Combined with the principle of mutual recognition, which holds that information collected or produced by one Member State is as valid as that collected or produced by another, disparate Member States become part of a single entity – the “Area of Freedom, Security and Justice.” The underlying reality is far more complex than the rhetoric might suggest.

A study prepared for the European Commission noted of the Principle of Availability that although “in reality it is certainly a vision worth pursuing”, it only “partly works in practice” and:

*It is almost impossible to realise its full potential... while there still exist different national, legal and administrative systems, data protection legislations, and also significant interoperability problems. [12]*

These differing legal and administrative systems, along with political problems and significant technical hurdles, have resulted in so few Member States implementing the necessary provisions by the required date. The Presidency report on Prüm implementation states that the ability of Member States to meet the 26 August 2011 deadline was “hampered by domestic issues such as pending legislation, technical concerns or concerns with regard to human or financial resources.”

### **Coordination and management**

However, from crisis comes opportunity. Establishing the systems required by the Prüm Decisions seems to have spurred the growth of more centralised, EU-level systems for coordination and oversight. The Presidency’s evaluation notes that “the need [for] a coordinated implementation management both on national and on EU level proved to be essential.” [13] At the EU level, this took the form of the establishment of the Ad hoc Group on Information Exchange, now formalised as the Working Group on Data Protection and Information Exchange (working under the acronym DAPIX and in which “data protection [is] discussed as the need arises”). [14]

From its establishment as an Ad hoc Group through to its current formal status, DAPIX has been one of the key forums in the Council for the discussion of new EU-wide information exchange projects based on computer networks or central databases such as the European Police Records Information System (EPRIS) and the Information Exchange Platform for Law Enforcement Agencies (IXP).

Further assistance was provided to Member States by the establishment of the “Mobile Competence Team (MCT),” a group of experts given the task of supporting Member States in the implementation procedure. This has led to the formation of a “helpdesk” at Europol. A job advertisement (with a closing date of 30 December 2011) for the post of “Product Management Officer Prüm Helpdesk” states that the contract will last initially for two years, but may be renewed. Clearly EU-wide implementation is not expected any time soon. [15]

The Presidency has also suggested that future work at a national level should be subject to greater scrutiny by the Council:

*In view of the general monitoring of the implementation by Council bodies, a smooth communication between authorities concerned and a coherent approach at national level would lead to more reliable information on the state of play.*

Furthermore, “legal issues should be assessed as well since long legislative procedures could have a significant impact on the implementation procedure and should be taken into account when setting deadlines.” One of the three conclusions of the “lessons learned” paper is that there needs to be “a dedicated overarching management and assistance structure.” This has been phrased elsewhere as “a common project management with detailed reporting and monitoring.” [16]

The implementation of a decentralised network seems hard to achieve without some form of centralised decision-making and oversight. Quite what form this may take in the future remains to be seen. The recently-established Agency for the Management of Large-Scale IT Systems only has a remit to manage the Schengen Information System II (SIS II), the Visa Information System (VIS), and Eurodac (the EU database of asylum-seekers’ fingerprints). However, the option is open, subject to the adoption of new legislative instruments, for the Agency to take on the management of other large-scale IT systems. [17]

Whether a decentralised network such as that mandated by Prüm can be considered a “large-scale IT system” may be a matter for debate further down the line. The pooling of resources and technical knowledge in the new IT Agency may give rise to demands that it become responsible for assisting with implementation of Prüm and any similar networks established in the future.

The other two conclusions made by the Presidency relate to the need for “EU funding to be [easily] accessible” (many Member States complained about the red tape surrounding access to funding for Prüm implementation), and for “a proper identification of resources to be deployed.” A thorough impact assessment was not carried out prior to the drafting of the Prüm legislation. Considering the scale and scope of the project, this could be considered somewhat short-sighted at the very least.

## **Conclusion**

For the time being, the ability of Member States to exchange fingerprint, DNA and vehicle registration data remains severely curtailed due to both EU and national-level problems that could – and perhaps should – have been foreseen in the preparation and drafting process. Instead, solutions were prepared on-the-fly as problems arose.

There are of course other serious problems with the Prüm system of data exchange. The issue of the “rising risk of false positives” has been analysed by Statewatch: the crux of the argument is that due to the way in which DNA profiles are considered to be a positive match – or “hit” – when a search is undertaken, the risk of the detection of false positives increases as a greater number of Member States join the network. Similar issues may exist with the automated searching of fingerprint databases: one author makes the argument that the risk of false positives arising from the use of AFIS “has not been sufficiently investigated or explored.” [18] And as with so many of the EU’s other databases and IT systems, the Prüm system raises questions about necessity, proportionality, accountability, and even the desirability of a single European judicial area when the professional and legal standards to which different institutions and authorities are held accountable differ widely.

For the time being, attempts at national level to undertake the complex implementation procedure will continue, with the Council breathing down the neck of those Member States lagging behind. Deadlines have disappeared. Instead, Member States are now left with exhortations calling for “finalisation”, “intensification”, and greater “cooperation.” [19]

## **Endnotes**

1. *Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA*

2. Eric Töpfer, ‘Europe’s emerging web of DNA databases’ <http://database.statewatch.org/article.asp?aid=30566>

3. Presidency, ‘Implementation of the Prüm Decisions – lessons learned’, 20 December 2011 (EU doc. no. 18676/11), p.4,

<http://www.statewatch.org/news/2012/jan/eu-council-prum-data-exchange-evaluation-lessons-18676-11.pdf>

4. Draft Council Conclusions on intensifying the implementation of the “Prüm Decisions” after the deadline of 26 August 2011, 5th December 2011 (EU doc. no. 17762/11), p.1,

<http://register.consilium.europa.eu/pdf/en/11/st17/st17762.en11.pdf>

5. Presidency, ‘Implementation of the provisions on information exchange of the “Prüm Decisions” Overview of documents and procedures – overview of declarations – state of play of implementation of automated data exchange”, 26 March 2012 (EU doc. no. 5086/2/12 REV 2)

6. Presidency, ‘Draft discussion paper on the state of play of the implementation of Council Decisions 2008/615/JHA and 2008/616/JHA (“Prüm Decisions”)', 28 October 2010 (EU doc. no. 15567/10), p.1, <http://register.consilium.europa.eu/pdf/en/10/st15/st15567.en10.pdf>

7. Eric Töpfer, ‘Europe’s emerging web of DNA databases’ <http://database.statewatch.org/article.asp?aid=30566>

8. Eric Töpfer, ‘Europe’s emerging web of DNA databases’ <http://database.statewatch.org/article.asp?aid=30566>

9. 5086/12, p.19

10. Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010,

<http://www.oireachtas.ie/documents/bills28/bills/2010/0210/b0210d.pdf>

11. FBI, ‘CODIS Brochure’, [http://www.fbi.gov/about-](http://www.fbi.gov/about-us/lab/codis/codis_brochure)

[us/lab/codis/codis\\_brochure](http://www.fbi.gov/about-us/lab/codis/codis_brochure)

12. International Centre for Migration Policy Development, ‘Study on the status of information exchange amongst law enforcement authorities in the context of existing EU instruments’, p.8, [http://ec.europa.eu/home-affairs/doc\\_centre/police/docs/ICMPD%20Study%20LEA%20InfoEx.pdf](http://ec.europa.eu/home-affairs/doc_centre/police/docs/ICMPD%20Study%20LEA%20InfoEx.pdf)

13. Presidency, ‘Implementation of the Prüm Decisions – lessons learned’, 20 December 2011 (EU doc. no. 18676/11), p.2,

<http://www.statewatch.org/news/2012/jan/eu-council-prum-data-exchange-evaluation-lessons-18676-11.pdf>

14. Ad hoc Group on Information Exchange, ‘Summary of discussions’, 3 February 2010 (EU doc. no. 5858/10), p.2,

<http://www.statewatch.org/news/2010/aug/eu-council-ad-hoc-dp-5858-10.pdf>

15. Europol, ‘Job description’, 18 November 2011,

<https://www.europol.europa.eu/sites/default/files/fgiv-11.pdf>

16. CATS, ‘Outcome of proceedings’, 13 December 2011 (EU doc. no. 18579/11), p.3,

<http://register.consilium.europa.eu/pdf/en/11/st18/st18579.en11.pdf>

17. Recitals (4) and (12), Preamble, Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011, establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

18. Jennifer L. Mnookin, 'The use of technology in human expert domains: challenges and risks arising from the use of automated fingerprints identification systems in forensic science', *Law, Probability and Risk* (Vol 91(1)), pp.47-67

19. Draft Council Conclusions on intensifying the implementation of the "Prüm Decisions" after the deadline of 26 August 2011, 5th December 2011 (EU doc. no. 17762/11), p.4

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