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NOTE

from:	Presidency
to.:	Working Group on Information Exchange and Data Protection (DAPIX)
Subject:	Draft Council Conclusions following the Commission Communication on the European Information Exchange Model (EIXM)

1. The Presidency submits herewith draft Council Conclusions on enhancing efficient cross-border information exchange in the area of law enforcement information. The draft conclusions are based on comments delegations were invited to submit on

- the Commission Communication on the European Information Exchange Model (EIXM),
- the Commission report on the implementation of the "Prüm Decisions" and
- the study on possible ways to enhance the efficiency in the exchange of police records between the Member States by setting up a European Police records Index System (EPRIS).

2.1 EIXM Communication

Delegations generally welcomed the EIXM Communication as a reliable description of the status quo of the law enforcement information exchange framework and supported its conclusion that current instruments should be fully implemented and applied before reflecting on new instruments. The Commission's intention to consider infringement procedures in case of delayed implementation was duly noted. However, concerns were voiced on the lack of basic and strategic perspectives to overcome identified gaps concerning cross-border information exchange.

2.1.1 Swedish Framework Decision

As to the SFD, Member States welcomed that the Commission Communication pointed out the added value of the instrument. In a view, however, of one MS the main reason for it not being fully deployed, in addition to the cumbersome forms, was the insistence of some Member States to ask for formal mutual legal assistance where not appropriate. This was considered contrary to the principle of equivalent access to available information, leading to delayed information exchange and potential failure of prosecution.

It was explained further that such procedures were not required in the case of cross-border information exchange for police purposes when the intervention of a judicial authority prior to information exchange had to be asked for at domestic level. Instruments for judicial cooperation between MS, however, were required in the case that information received should be used as evidence before a judicial authority and, to that end, the consent of the transmitting MS had to be asked for.

2.1.2 Europol

Member States supported practical cooperation with Europol, in particular where follow-up procedures for Prüm and information exchange in the SFD framework were concerned.

2.1.3 Channels and communication tools

As to the topic of SIENA as the default communication tool for law information exchange within the EU, while many MS agreed on the principle, the majority of MS asked for sufficient flexibility with regard to their choice of communication tools. However, in order to enhance and facilitate the use of SIENA as a default communication tool, specific IT solutions to improve interoperability with national workflows were asked for.

Some Member States stressed that SIENA was an application for police cooperation and could not be used in the framework of judicial cooperation for mutual legal assistance or stated that it didn't serve the purpose of information exchange between customs authorities. In addition, the conditions for SIENA as a communication tool for PCCCs must carefully be analysed and reviewed taking account of national competencies in determining the information channel for such bodies.

A Member State voiced concerns about SIENA as the solution to replace the SISNET mail communication tool since the essence of information exchanged via SISNET mail was not covered by the Europol mandate. However, the SIENA application can be used independently of the Europol mandate and there is no need to report to the Agency or the ENUs.

Another question was whether SIENA could cope or not with the amount of messages exchanged via SISNET mail. However, as often explained by Europol, the SIENA network is scalable. Finally, several delegations pointed out that, though SIENA operates on a 24/7 basis, it requires a network of ENUs many of which are not operational on a 24/7 basis. They therefore prefer to replace SISNET mail by the traditional Interpol channel. They also pointed out that the volume of exchanges currently being processed via SISNET mail could not be absorbed by ENUs without having to increase their resources significantly.

In view of the incumbent closure of SISNET, on the one hand, and, on the other hand, the number of optional communication tools, the creation of a common European policy should be considered (encompassing all relevant legal instruments/operational needs and communication tools/applications), and one Member State suggested that a general manual on the choice of the appropriate communication channels be drafted.

2.1.4 SPOCs

Member States agreed on the recommended set up of SPOCs streamlining at national level the cross-border information exchange activities through organising all information channels in a consistent way and applying more common standards and working methods. However, the consequences should be carefully weighed up in this regard since SPOCs were not considered as a panacea and their organisation sometimes created other problems to be solved at domestic level. Once more, Member States underlined in this context their prerogative to choose the appropriate information channels.

2.2 *Prüm report*

Member States welcomed the report as a reliable description of the state of play. It was, however, regretted that the report was limited to such a description and no discussion was launched on structural deficits, known weaknesses and identified design deficits of the current system. Although the post-hit procedures do not fall in the scope of the Prüm Decisions, these procedures, in particular the development of commonly agreed uniform procedures, should have been discussed in the EIXM Communication.

Furthermore, some Member States expressed difficulties to understand the delay in the implementation of the Prüm Decisions and found that the reasons mentioned in the report fell short in view of the technical assistance and the funding provided. A more detailed reasoning on the causes for the delay, in particular in view of business requirements, would have been welcomed.

It was, as well, underlined that the report would have been more critical if the term "operational" would not have been based on the required Council Decision to launch information exchange but on the effective exchange of information. The Commission was explicitly asked for further funding, to be provided in a less complex and restrictive manner.

2.3 *EPRIS study*

Member States supported the conclusion of the EPRIS study that the existing information exchange instruments suffice provided they are fully implemented and applied to their full potential.

However, the study further concludes that none of the various systems and instruments currently used for information exchange matches fully the police demand for an EU-wide index of specific police data. It was therefore recommended that it should already be reviewed which gaps continue after full application of available instruments and how to solve these problems.

3. Way forward

The draft Conclusions are structured subject wise, namely referring to the content of the EIXM Communication, the Prüm report and the EPRIS study. They take account of comments submitted by Member States on these topics and of comments delegations were invited to submit subsequent to first discussions on the draft at the DAPIX meeting of 27 March.

To increase the readability of the draft Conclusions, changes with regard to the previous text are set out in **bold and underlined**.

With a view to submitting the draft Conclusions to the Council for approval on 6/7 June 2013, the Presidency invites DAPIX to approve the current version at its meeting of 15 May 2013.

**DRAFT COUNCIL CONCLUSIONS FOLLOWING THE
COMMUNICATION ON THE EUROPEAN INFORMATION EXCHANGE MODEL
(EIXM)**

THE COUNCIL OF THE EUROPEAN UNION

ACKNOWLEDGING, in line with the Stockholm Programme, that effective information exchange across the European Union is crucial to law enforcement authorities in their efforts to detect, prevent and investigate criminal activities across borders in order to ensure the security of EU citizens through co-operation between law enforcement authorities of Member States,

WELCOMES that a considerable number of initiatives in the area of criminal intelligence and information exchange have been implemented over the past years, **REQUESTS**, however, that Member States speed up the implementation and full application of all existing legal instruments for the exchange of law enforcement information,

STRESSES, that safeguarding fundamental rights, in particular the right to privacy and data protection should be a core principle for any initiative in the field of law enforcement information exchange;

RECALLING that the Stockholm Programme called on the Commission to assess the need for developing a European Information Exchange Model (EIXM) based on the evaluation of the current instruments, including the so-called Swedish Framework Decision and the “Prüm” Decisions,

WELCOMES the Commission Communication on the EIXM¹ and **RECOGNISES** that the Information Management Strategy for EU internal security (IMS)² as well as the 2012 Council Conclusions on further enhancing efficient cross-border exchange of law enforcement information were taken into account for the Communication on the EIXM,

¹ Communication from the Commission to the European Parliament and the Council on strengthening law enforcement cooperation in the EU: the European Information Exchange Model (EIXM) doc. 17680/12 JAI 913 DAPIX 163 ENFOPOL 418 JURINFO 64

² doc. 16637/09 JAI 973 CATS 131 ASIM 137 JUSTCIV 249 JURINFO 145

NOTES that the EIXM Communication focuses on the mapping of the current information exchange within the EU and while no gaps in terms of legal instruments are identified, improvement of the implementation of these instruments in the Member States is encouraged,

AGREES accordingly that currently no need exists for new **legal** instruments for law enforcement information exchange but existing instruments should be used to their full extent and in a coherent manner;

(...)

RECALLING the 2012 assessment of the implementation of the "Swedish Framework Decision" (SFD) and conscious it has not yet reached its full potential,

UNDERLINES that the provisions of the "Swedish Framework Decision" constitute a legal obligation when replying to requests falling under its scope,

URGES Member States to fully implement the "Swedish Framework Decision" **and** respect the principle of availability **and the principle of equivalent access** for cross-border law enforcement information exchange as laid down in the Hague Programme, in particular **in accordance with Article 1 and 3 of the SFD where** judicial authorities are **involved**;

TAKES NOTE of the Commission report on the implementation of Council Decision 2008/615/JHA and of Council Decision 2008/616/JHA on implementing Council Decision 2008/615/JHA ("Prüm Decisions")³,

STRESSES the importance of (...) effective implementation of the "Prüm Decisions" for improving European cross border exchange of law enforcement information, and therefore **WELCOMES** the overall progress made in the implementation of the "Prüm Decisions" but

³ Report from the Commission to the European Parliament and the Council on the implementation of 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 ("Prüm Decisions"), doc. 17679/12 JAI 911 DAPIX 162 CATS 85 ENFOPOL 417 JURINFO 63

REGRETS the delay in the full implementation and application of the "Prüm Decisions",

CALLS on Member States not yet Prüm operational, while fully acknowledging the challenges with which they are confronted in their efforts to implement the "Prüm Decisions", to intensify their work in this regard,

WELCOMES the support given by the Mobile Competence Team (MCT), which will come to an end in July 2013, and by the Prüm helpdesk at Europol, for the implementation and maintenance of biometric data exchange provisions and by EUCARIS for the implementation of the vehicle registration data (VRD) exchange provisions,

ACKNOWLEDGES that the report focusses on a description of the status quo and on the need to implement existing legislation and does not propose structural changes e.g. regarding governance or design deficits of the current system before full implementation of existing legislation,

INVITES Europol, **within existing resources,** to continue operating the Prüm helpdesk, building upon the work carried out by the MCT and to further promote the use of the Europol Platform for Experts (EPE) established to share knowledge and expertise among national experts tasked to implement the "Prüm Decisions",

(...)

CALLS on the Prüm operational Member States to further advise Member States still in the implementation phase, to participate in the peer evaluation procedure as necessary and to cooperate with the Prüm helpdesk in order to improve the efficiency of the current Prüm information exchange,

CALLS UPON the Commission to keep on funding the implementation of the "Prüm Decisions" but in a less complex and restrictive manner, and to ensure that funding for cross-border information exchange is reflected in all elements of the Internal Security Fund in an appropriate way, including national programmes and centrally managed funds,

TASKS its competent preparatory body to define criteria in order to set up meaningful Prüm data exchange statistics in order to allow for a thorough assessment of the instrument **and the added value of the information exchange.**

STRESSES that although the post-hit procedures do not fall within the scope of the "Prüm Decisions", these procedures, which play an important role in the success of the instrument, need further analysis and development,

CALLS upon all parties concerned to actively participate in the development of coherent Prüm hit follow up procedures, including the UMF II standard designed, among others, to facilitate and therefore be very beneficial for the Prüm post-hit follow-up and to define the next steps required after the UMF II project has come to an end;

RECALLING the recommendation for the establishment of **operational** Single Points of Contact (SPOC) as "one-stop shops" to ensure consistent national coordination of cross-border information requests by integrating, **on a voluntary basis and** to the extent possible, the relevant authorities and information exchange channels into a permanent structure on international cooperation (...), as laid down in the final report of the third round of Mutual Evaluations⁴, **the Manual of Good Practices concerning the International Police Cooperation Units at National Level**⁵ and complemented in the Commission's Communication on the European Information Exchange Model (EIXM),

UNDERScores this need to set up a SPOC **with full access to the relevant data and information exchange channels** where not yet done so,

(...)

RECALLING that the Stockholm Programme states that Europol should become a hub for information exchange between the law enforcement authorities of the Member States, **a service provider and a platform for law enforcement services,** (...)

⁴ Doc. 13321/3/07 REV 3 CRIMORG 141 ENFOPOL 152 ENFOCUSTOM 93.

⁵ **Doc. 7968/08 ENFOPOL 63**

RECOGNISING the central role of the national SIRENE Bureaux in the effective and successful police cooperation as regards the exchange of supplementary information related to alerts stored in the Schengen Information System where the effective cooperation is due to high data quality and formalised procedures,

ACKNOWLEDGING the role SIENA plays as a tool for law enforcement information exchange and UNDERLINING the possibility to use other reliable channels of law enforcement information exchange among the Member States,

STRESSES the need of the compilation of a manual on information exchange as included in the 3rd IMS Action List,

CALLS on Member States to further consider the use of SIENA for the exchange of information **within the context of police cooperation (...)** and to **(...)** develop transparent national rules for the choice of **the appropriate communication channel which specify the cases in which the Europol National Unit/ SIENA are not considered appropriate,**

INVITES Europol to **further enhance** the SIENA application in order to provide legal, technical and organisational compatibility **with both national and (other) international workflows,** **including those based on standard secure e-mail and case management systems,**

INVITES Europol to continue to develop **the concept of an** information exchange platform facilitating access to information through a structured, single platform for law enforcement officers **on the basis of an assessment of the business requirement at the end-user level and of the expected cost-benefit ratio;**

TAKING NOTE of the study on possible ways to enhance efficiency in the exchange of police records between the Member States by setting up a European Police Records Index System (EPRIS),

SUPPORTS, in particular, its recommendation to improve the use of the existing information exchange instruments, **and, wherever possible, ENCOURAGES the further automation of information exchange** before considering the establishment of a dedicated new data system or channel,

UNDERSCORES its conclusion that the various systems and instruments currently used for information exchange fail to meet fully the need **to rapidly locate all required** police data, as identified in the EPRIS study,

INVITES the Commission therefore to review which gaps continue after full application of available instruments and to propose recommendations how to solve these problems,

TASKS the competent preparatory body to further discuss the automation of **existing** data exchange processes in the framework of the Information Management Strategy (IMS);

INVITES the Member States and other stakeholders to share their experience and lessons learnt in the area of information exchange for law enforcement purposes with third countries, and to support the implementation process of EU candidate countries taking into account these findings.