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NOTE

From:	UK delegation
To:	Working Party on Information Exchange and Data Protection (DAPIX)
No. prev. doc.:	5309/17, 7952/17
Subject:	Clarification on DNA concerns raised at previous DAPIX meetings

1. Delegations will find in Annex a note from the UK delegation providing clarification on concerns, which were raised by Member States during the discussion on the UK implementation of Prüm DNA data exchange. Three areas of concern, which are dealt with in turn below, were raised:

- the inclusion of DNA profiles from "suspects", i.e. those who are not convicted of a criminal offence in the UK;
- the reporting and use of DNA matches to UK reference DNA data where the DNA match has less than 10 loci; and
- the agreement by the UK parliament to Prüm exchange.

2. Furthermore, the UK delegation replies to a reservation with regard to the implementation of the General Data Protection Regulation (EU) 2016/679 .

1. UK clarification on DNA concerns raised at previous DAPIX meetings

- The inclusion of DNA profiles from "suspects", i.e. those who are not convicted of a criminal offence in the UK

The UK parliament has taken a position that only DNA profiles from individuals who are convicted will be exchanged through Prüm arrangements. Following the introduction of legislation in the UK to comply with the European Court Judgement in the case of S and Marper legislation referred to as the Protection of Freedoms Act 2012 was introduced that restricted the retention of DNA profiles from individuals who were not convicted.

This is a complex retention regime that is based on age of the individual, the seriousness of the offence and the opportunity for the UK police to make an application to the Commissioner for the Retention and use of Biometric Material (Biometrics Commissioner). This means that the retention of individuals that are not convicted will be subject to limited retention within the law and this group constitutes around 3% of the total UK National DNA Database. The remaining 97% of the DNA profiles estimated at **five million DNA profiles will be available for exchange within Prüm arrangements.**

There is also a practical reason for progressing the UK Prüm exchange with convicted individuals who are the subject of indefinite retention in that the current UK National Database is not capable of delivering Prüm connectivity and is due to be replaced in 2019-20. To facilitate availability of the vast majority of the DNA profiles from the UK DNA Database, we have established a separate database using the CODIS application and this will be used for the UK exchange of the 5 million DNA profiles.

If a member state had a very high profile or serious case then the Interpol channels could be used to request a search the UK National DNA Database and all DNA profiles that are retained in the UK at that time and available to UK police forces would be available to member states in line with the principles of Availability of Information (Hague Program) and of Equivalent Access (Swedish Framework Decision).

- The reporting and use of DNA matches to UK reference DNA data where the DNA match has less than 10 loci
- The UK will be compliant with all of the agreed procedures for Prüm DNA exchange including the provision of Step 1 DNA matches for six loci and validation of all DNA matches above working with member states to achieve this. For Step 2 the UK will utilise existing national processes through release of information **through the**¹ National Contact Point (same organisation as Prüm step 2) at the UK International Crime Bureau (UKICB) based in the National Crime Agency, **through any existing exchange mechanism**. For DNA matches of 10 loci or more we will automatically release demographic information upon request in line with existing processes and for DNA matches of 6-9 loci we request that following successful verification if the DNA match is still less than ten loci that member states make a request using the Interpol Form and the demographic information will be released by this route.

Agreement by the UK parliament to Prüm exchange

The implementation of the Prüm arrangements for DNA exchange by the UK does not require and further changes UK law or domestic legislation. Based on our business case and adoption of the Prüm Treaty we are required to notify parliament through secondary legalisation the processes that will apply to Prüm DNA exchange but this do not stop us proceed with the implementation of Prüm DNA exchange as soon as the relevant EU approvals are gained (starting with DAPIX).

Proposed process for DNA exchange

Given that our database is so large we wish to exchange the legacy data in stage making 500,000 subject profiles available in each stage and searching 160,000 unidentified UK stains at each stage. Once we have undertaken stage one we will know the impact of the hits and assess how long each stage will take. This is to minimise risk of sitting on hits and not responding in timely manner to other member states in a timely manner, and also so we can manage UK hits efficiently.

It should be noted that the day after our first article 3 exchange we intend to fully comply with article 4 and search any new convicted subjects or stains loaded to the national database. After the first article four exchange the next day article 3 will continue and the stages are for legacy profiles only.

¹ Changes with regard to the previous version are set out in **bold**.

2. UK response to the reservation with regard to the General Data Protection Regulation (EU) 2016/679

To accord with the EU Regulation 2016/697 the United Kingdom will replace its existing Data Protection legislation with a new Data Protection Act 2018 (the Act) on 25th May 2018. This Act will fully incorporate the General Data Protection Regulation (EU) 2016/679, thereby replacing the 1998 Data Protection Act (which incorporated EU Data Protection Directive 95/46/EC).

As a further measure to protect the rights and privacy of data subjects the United Kingdom will also incorporate the EU Data Protection Directive 2016/680, also known as the Law Enforcement Directive (LED), into domestic legislation under the Act. This replaces the 2008 Council Framework Decision 2008/977/JHA.

For the purpose of processing both personal and sensitive personal data (special categories of personal data) which includes genetic data, and biometric data where processed to uniquely identify an individual within the LED, the Act requires that bodies must be identified as Competent Authorities. Both the Commissioner of Police of the Metropolitan and the Director General of the National Crime Agency are duly recognised under Schedule 7 the Act.
