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Committee on Civil Liberties, Justice and Home Affairs

PROGRAMME

Public Hearing

on

THE PRÜM DECISION:

***Striking the balance between data
protection and effective police cooperation?***

Monday 7 May 2007

3 p.m. - 6.30 p.m.

Meeting Room PHS 4B 001

(Paul Henri Spaak Building)

Brussels

Less than one year ago (22 June 2006), the Committee on Civil Liberties, Justice and Home Affairs hosted a public seminar on the Prüm Convention, with the participation of the National Parliaments of the Member States, representatives from the European institutions and the national and European data protection authorities. At the time it was hardly expected the transposition of certain Prüm measures into the framework of the European Union would become a strong reality within less than a year. But the situation changed when the German Presidency made it a priority to integrate certain measures from the Prüm Treaty into the EU legal structure.

Seven EU Member States signed the Prüm Treaty on the 27 May 2005, in order to promote cross-border cooperation, especially in the fight against terrorism, cross-border crime and illegal migration¹, and it entered into force in Austria and Spain on 1 November 2006 and in Germany on the 23 November 2006. It has been ratified in Belgium and Luxembourg and should enter into force there by the beginning of May. Eight additional Member States have formally declared their intention to accede to it.² The Treaty provides for cross-border cooperation through the exchange of information on DNA data, fingerprints, vehicle registration, and personal and non-personal data related to cross-border police cooperation between the Contracting Parties.

The Prüm Treaty is a Treaty of international law, and although it was adopted outside the framework of the EU, it is closely related to the EU from a content perspective. The German initiative to integrate Prüm into the legal framework of the EU was met with broad support during an informal JHA Council meeting in Dresden on the 15-16 January 2007, and agreement was reached on transposing "essential parts" of Prüm by means of a Third Pillar Decision, at the JHA Council of 15 February 2007.³ The original Prüm initiative included many provisions that touch upon First Pillar competences, and therefore were omitted from the Council Decision.

The aim of the Prüm Decision is to intensify and accelerate the exchange of information between law enforcement authorities. This is to be achieved by providing for the possibility to compare an individual DNA profile with profiles to be found in automated databases in the Member States. Links can be made between these personal data by means of national contact points (to be established), and will be used in the fight against terrorism. Data on fingerprints may be exchanged, as well as vehicle registration data. Certain measures were forcibly excluded; they either fell under the First Pillar, proved too contentious and divisive (i.e. the provision for cross-border hot pursuit).

The principle of "availability", included in the Hague programme agreed upon in November 2004, stipulated "*...the exchange of information should be governed by conditions ... set out by the principle of availability ...*" to enable a law officer in one Member State requiring information to perform his duties to obtain this information from another Member State.⁴ While the Commission presented a Draft Framework Decision on the principle of availability in October 2005, however, to date, no progress has been made on this file. What are the implications for the Framework Decision on the principle of availability, with the incorporation of certain Prüm measures into the framework of the EU?

¹ The seven initial Contracting Parties include: Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria.

² Finland, Italy, Portugal, Slovenia, Sweden, Romania, Bulgaria and Greece. The Finnish Parliament (Eduskunta) ratified Prüm and it will enter into force the 17 June 2007.

³ Press Release. 2781st Council Meeting-Justice and Home Affairs. Brussels, 15 February 2007. 5922/07.

⁴ Presidency Conclusion. Brussels, 4-5 November 2004. Annex 1. 14292/1/04 REV 1.

Outstanding issues/questions:

There are a number of issues that deserve debate and analysis, in order to assess the impact of such measures on the citizens of the EU, and the impact on the Area of Freedom, Security and Justice. Can the demands of operational and efficient police cooperation in the fight against the main threats to the EU's foundations be balanced with the protection of fundamental rights?

To begin with, the Council proposal to incorporate parts of the Prüm Treaty into EU law, as opposed to the original Prüm system, will create a system where there are two frameworks in place. How will this affect the operational capacity of the Member States in the realm of police cooperation in the fight against terrorism and cross-border crime? The International Prüm Treaty envisaged its own incorporation into the EU legal framework three years after entering into force.¹ In fact, the proposal came merely some months after the agreement first entered into force. Therefore, there has been no opportunity to undertake an impact assessment, an opinion previously iterated by Members of the European Parliament and the European Data Protection Supervisor (EDPS). Another imperative matter relates to the hastened opinion of the EP, and the fettered oversight granted to the EP under the consultation procedure. What are the implications relating to the lack of parliamentary and democratic oversight? This issue was already of concern when the international Treaty of Prüm was negotiated and adopted: national parliaments were only involved at the stage of ratification² and the European Parliament was not involved. A further element of concern relates to data protection: are the data protection provisions adequate, as the measures proposed in the Draft Council Decision are expansive and invasive?

In order to assess the impact on the EU and its Member States, discussions shall focus on the core elements of the Draft Council Decision. It establishes a legally binding obligation to create national DNA databases in all Member States.³ Are the Member States technologically capable of adhering to such a principle? Do all Member States actually have DNA databases? If not, what countries? Regarding data access control, there are cases where data could be transmitted in the case of presumption of risks. What explicitly warrants a presumption of risk? Comprehensive impact analysis from a data protection point of view is thus required; at both the national and European level. Are there possible problems envisaged? What are the implications from a practical point of view?

Who shall bear the cost of this programme?⁴ Who will fund the national databases? Some Member States have already requested financial assistance. Will it be funded by the Community budget, or by the Member States? Are the synergy and harmonisation of the measures contained in the Draft Council Decision not in jeopardy without definite and unambiguous methods? What is the relationship with the administrative and technical mechanisms of the Implementing Agreement to the Prüm Convention?

¹ Article 1(4). Council of the European Union. *Prüm Convention*. Brussels, 7 July 2005. 10900/05.

² As well as national data protection authorities : for example, the French CNIL (Commission Nationale de l'Informatique et des Libertés) only had the possibility to express reservations or make a declaration to be annexed to the ratification documents : CNIL recommendation N° 2006-220, 28 September 2006.

³ Article 2(1) "*Member States open and keep national DNA analysis files for the investigation of criminal offences...*" Council of the European Union. *Council Decision 2007/.../JHA of on the stepping up of cross border cooperation, particularly in combating terrorism and cross-border crime*. Brussels, 6 March 2007. 6566/1/07.

⁴ See Arts. 34 and 35 (Implementation measures and costs). *ibid.*

Opening Panel
3 p.m. - 4 p.m.

Mr Stavros Lambrinidis (Vice-Chairman of the Committee on Civil Liberties, Justice and Home Affairs)

Mr Fausto Correia (Rapporteur, Committee on Civil Liberties, Justice and Home Affairs)
Presentation of the draft report on the Council Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (10 minutes)

Mr Günther Krause (German Presidency of the Council, Chair of the Committee Article 36)
The view of the German Presidency and the current state of play in the Council (7-10 minutes)

Mr. Joaquim Nunes de Almeida (Head of Unit for Fight against Terrorism, Trafficking and Exploitation of Human Beings, and Law Enforcement Cooperation, Directorate-General for Justice, Freedom and Security, European Commission)
The view of the Commission and the current state of play (7-10 minutes)

Discussion: 30 minutes

Panel I
4 p.m. - 5 p.m.

Implications from an implementation perspective
Increased cross-border cooperation: technical and operational aspects

The Draft Council Decision envisages the strengthening of cross-border cooperation through the creation of a network of national databases to enable the exchange of information between the law enforcement authorities (i.e. DNA). In real terms, how will these cooperative measures between the Member States operate? Will the increased cooperation provide tangible benefits for police and law enforcement authorities?

Mr Reinhard Schmid (Austrian Federal Ministry of the Interior, Head of Bureau for Biometric Identification)
The processes related to the exchange of DNA (7-10 minutes)

Mr Fabrizio Gandini (Ministry of Justice, Italy) (to be confirmed)
Police cooperation: Practical issues for the authorities (7-10 minutes)

Mr Paulo de Almeida Pereira (Portuguese Permanent Representation)
The Convention and its Implementing Agreement (7-10 minutes)

Discussion: 30 minutes

Panel II
5 p.m. - 6 p.m.

Data exchange and data protection measures
Relationship of Prüm to the Framework Decision on data protection

The Draft Council Decision provides for the exchange of data on DNA, fingerprints, vehicle registration and personal and non-personal data for mass cross-border events. What are the implications for data protection? How can it be guaranteed that a balance will be sought between increased cooperation, and the protection of privacy rights?

Mr Peter Hustinx (European Data Protection Supervisor)
Are data adequately protected under the terms of the proposed Council Decision? (7-10 minutes)

Mr Georges de La Loyère (Member of Article 29 Data Protection Working Party, Member of the CNIL (Commission Nationale de l'Informatique et des Libertés))
Are data adequately protected under the terms of the proposed Council Decision ? through a national lens. (7-10 minutes)

Mestre Dulce Lopes (Assistant Professor at the Faculty of Law, University of Coimbra, Portugal)
Prüm and its relationship to international, Community and national instruments (7-10 minutes)

Discussion: 30 minutes

Concluding Remarks
6 p.m. - 6.30 p.m.

Mr. Joaquim Nunes de Almeida (Head of Unit for Fight against Terrorism, Trafficking and Exploitation of Human Beings, and Law Enforcement Cooperation, Directorate-General for Justice, Freedom and Security, European Commission) (10 minutes)

Mr Günther Krause (German Presidency of the Council, Chair of the Committee Article 36) (10 minutes)

Mr Fausto Correia (Rapporteur) (10 minutes)

ANNEX

PRACTICAL GUIDELINES FOR THE DEBATE

Presentations will be limited to 10 minutes (see programme for details).

The floor will be given to Members in the order in which requests are received.

Speakers wishing to supplement their speeches may do so in writing by submitting documents (preferably in English or French) in advance to the secretariat (email: ip-libe@europarl.europa.eu). These documents will be circulated during the meeting.

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Simultaneous interpretation will be available in the following languages : EN, FR, DE, IT, NL, ES, HU, EL, PT, RO, SV, PL

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