EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

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
(11563/2007 – 11045/1/07 – C6-0409/2007 – 2007/0821(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Bárbara Dührkop Dührkop

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics.*** In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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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 (11563/2007 – 11045/1/07 – C6-0409/2007 – 2007/0821(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the initiative of the Federal Republic of Germany (11563/2007 and 11045/1/07),

– having regard to Article 34(2)(c) of the EU Treaty,

– having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0409/2007),

– having regard to Rules 93, 51 and 41(4) of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),

1. Approves the initiative of the Federal Republic of Germany as amended;

2. Calls on the Council to amend the text accordingly;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Calls on the Council to consult Parliament again if it intends to amend the initiative of the Federal Republic of Germany substantially;

5. Instructs its President to forward its position to the Council and the Commission, and the government of the Federal Republic of Germany.

Amendment 1

Initiative by the Federal Republic of Germany
Citation 2 a (new)

Text proposed by the Federal Republic of Germany	*Amendment*
	Having regard to the opinion of the European Data Protection Supervisor of 19 December 2007,

Or. en

Justification

The implementing measure of the Prüm decision will often affect the processing of personal data and therefore the opinion of European Data Protection Supervisor on the matter is highly recommended although a member state taking the initiative under Title VI of the EU Treaty has no obligation to ask for it.

Amendment 2

Initiative by the Federal Republic of Germany
Recital 3 a (new)

Text proposed by the Federal Republic of Germany	*Amendment*
	(3a) It is necessary for the Council to adopt the framework decision on procedural rights as soon as possible in order to lay down certain minimum rules on the availability of legal assistance to individuals in the Member States.

Or. en

Justification

A uniform set of procedural guarantees at EU level is needed.

Amendment 3

Initiative by the Federal Republic of Germany
Recital 3 b (new)

Text proposed by the Federal Republic of Germany	*Amendment*
	(3b) The data protection rules laid down in Decision 2008/..../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime are to be created in 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 always that its level of data protection is adequate and not 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 of 8 November 2001.

Or. en

Justification

A level of data protection which is high, harmonized, and therefore appropriate to guarantee both citizens rights and law enforcement effectiveness in an area of Freedom, Security and Justice is needed. In this regard, the "the draft framework decision on data protection in third pillar" should act as 'lex generalis' while allowing the applicability of further specific guarantees and tailored stricter standards laid down by the Council Prüm initiative.

Amendment 4

Initiative by the Federal Republic of Germany
Recital 3 c (new)

Text proposed by the Federal Republic of Germany	*Amendment*
	(3c) Special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health should be processed only if absolutely necessary and proportionate for the purpose of a specific case and in compliance with specific safeguards.

Or. en

Amendment 5

Initiative by the Federal Republic of Germany
Article 2 – point (-a) (new)

Text proposed by the Federal Republic of Germany	*Amendment*
	(-a) "personal data" shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

Or. en

Justification

The Council decision on Prüm does not contain any clear definition of personal data and this lack persists in the implementing decision. Therefore, the reference to the definition of personal data given by article 2(a) of Directive 95/46 (EC)[1] shall be inserted in the current implementing decision on Prüm.

Amendment 6

Initiative by the Federal Republic of Germany
Article 2 – point (e)

Text proposed by the Federal Republic of Germany	*Amendment*
(e) "non-coding part of DNA" ***means*** chromosome ***regions not genetically expressed***, i.e. not known to provide ***for any functional properties of an organism***;	(e) "non-coding part of DNA" ***shall mean*** 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 either now or in future***;

[1] OJ L 281, 23/11/1995, p. 31

Or. en

Amendment 7

Initiative by the Federal Republic of Germany
Article 18 – paragraph 1

Text proposed by the Federal Republic of Germany	*Amendment*
1. Further details concerning the technical and administrative implementation of Decision 2007/…/JHA are set out in the Annex to this Decision. The Annex may be modified by the Council, ***acting by a qualified majority***.	1. Further details concerning the technical and administrative implementation of Decision 2007/…/JHA are set out in the Annex to this Decision. The Annex may be modified by the Council, ***after consulting the European Parliament***.

Or. en

Justification

Any modification to the Annex shall follow the current procedure provided by Article 34(2) (c) and article 39 of the Treaty on European Union which requires the consultation of the European Parliament by the Council.

Amendment 8

Initiative by the Federal Republic of Germany
Article 20 – paragraph 1

Text proposed by the Federal Republic of Germany	*Amendment*
1. The Council shall take a decision referred to in Article 25(2) of Decision 2007/…/JHA on the basis of an evaluation report which shall be based on a questionnaire as set out in Chapter 4 of the Annex to this Decision.	1. The Council shall take a decision referred to in Article 25(2) of Decision 2007/…/JHA on the basis of an evaluation report which shall be based on a questionnaire as set out in Chapter 4 of the Annex to this Decision. ***The independent data protection authorities of each Member State concerned shall be fully involved in the evaluation procedure set out in Chapter IV of the Annex to this Decision.***

Or. en

Justification

Any decision related to the implementation of data protection rules shall require the full involvement of the competent data protection authorities of the Member state concerned because of the essential advisory role of these authorities in the matter.

Amendment 9

Initiative by the Federal Republic of Germany
Article 21 – paragraph 2 a (new)

Text proposed by the Federal Republic of Germany	*Amendment*
	2a. The General Secretariat of the Council shall transmit on a regular basis to the European Parliament and the Commission the results of the evaluation of data exchange in the form of a report as referred to in Chapter IV, paragraph 2(1) of the Annex to this Decision.

Or. en

Justification

The correct and effective implementation of the Prüm decision along with its implementing measure is an absolute priority for the European Parliament which shall be fully informed on the progress evaluation of these instruments.

Amendment 10

Initiative by the Federal Republic of Germany
Addendum to the Initiative – Chapter 1 – point 1.1 – subparagraph 3

Text proposed by the Federal Republic of Germany	*Amendment*
Inclusion Rule:	Inclusion Rule:
The DNA-profiles made available by the Member States for searching and comparison as well as the DNA-profiles sent out for searching and comparison must	The DNA-profiles made available by the Member States for searching and comparison as well as the DNA-profiles sent out for searching and comparison must

contain at least 6 loci and ***may*** contain ***other*** loci or blanks depending on their availability. The reference DNA profiles must contain at least 6 of the 7 ESS/ISSOL loci. In order to raise the accuracy of matches***, it is recommended that*** all available alleles be stored in the indexed DNA profile ***data pool***.	contain at least 6 loci and ***must*** contain ***additional*** loci or blanks depending on their availability. The reference DNA profiles must contain at least 6 of the 7 ESS/ISSOL loci. In order to raise the accuracy of matches, all available alleles ***shall*** be stored in the indexed DNA profile ***database and be used for searching and comparison. Each Member State shall implement as soon as practicable any new ESS of loci adopted by the EU***.

Or. en

Justification

In order to compare DNA profiles, the accuracy of the match between values of compared loci is an essential condition. The higher is the number of loci that match, the less likely it is that there is a false match between DNA profiles that have been compared. The European Standard Set of Loci (ESS) contains 7 loci but this number could increase in the future. Furthermore, there are national database already working with comparisons on the basis of 10 loci (higher number than the ESS of loci) and as a rule they should be compelled to use all loci available since the accuracy of the match increases with the number of loci compared.