

HOUSE OF LORDS

European Union Committee

18th Report of Session 2006–07

**Prüm: an effective
weapon against
terrorism and
crime?**

Report with Evidence

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FOREWORD—What this Report is about

The Prüm Treaty is an initiative by seven Member States which, having decided on their own common action for improving cooperation in combating terrorism and serious cross-border crime, are now attempting to incorporate it into EU law.

A Decision based on the Prüm Treaty can only be adopted unanimously. The Government are therefore in a strong negotiating position. Although initially slow in reacting to the proposal, they have obtained agreement on the deletion of a provision on “hot pursuit”. We have recommended that they should also seek agreement on the estimated cost of incorporating the provisions, on monitoring the operation of the Decision, and on the fate of a related Commission proposal.

The Prüm Treaty is mainly concerned with the exchange of data. Inevitably this raises data protection issues. As so often, these tend to be overlooked. We believe that Member States now have an opportunity to link negotiations on the fight against crime with agreement on a Data Protection Framework Decision guaranteeing an appropriate level of protection for the personal data which are exchanged. We have made suggestions as to how this might be done.

In this report we have looked at the Prüm initiative; at how it relates to other proposals in the same field which are genuine EU initiatives; and at the desirability of a small number of States attempting to bypass the established procedures.

Prüm: an effective weapon against terrorism and crime?

CHAPTER 1: INTRODUCTION

1. In principle, any EU initiative to improve cooperation between the Member States in the fight against terrorism and other serious cross-border crime is to be welcomed. The subject of this report, the Prüm Treaty, is an initiative of only a few Member States to enhance cooperation between themselves.¹ It may be ideal for them and, although the EU Commission were not consulted at all in its drafting, it is perfectly in order for those Member States to wish to have their agreement adopted by the EU as a whole. However the other Member States, the Commission, and appropriate bodies such as the European Data Protection Supervisor should be entitled to have a say in the classes of information which are to be exchanged, the procedures for exchanging them and the safeguards which will apply. Furthermore, an Explanatory Memorandum and assessment of costs should have been submitted beforehand for all to consider, just as the Commission do when they propose legislation. In its haste to agree a Decision based on the Prüm Treaty during its Presidency, Germany has markedly failed to produce these or to consult fully.
2. What is remarkable is how little any of the other Member States appear to have questioned what they are being asked to agree. The purpose of our inquiry has been to see whether the Government are right to accept these radical proposals almost without question.
3. We requested a number of persons and bodies whose views we knew would be especially significant to supply us with written evidence, and we asked some of these for oral evidence. Their evidence is printed with this report. We are most grateful to all those who have helped us in this way.
4. The German Presidency has been the main moving force, and we would have welcomed an opportunity to hear their views on aspects of the inquiry. Unfortunately, apart from a written answer to a question put by the Select Committee to the German Ambassador in a separate evidence session,² the Presidency declined to give evidence to the Committee. **We put on record our regret that the German Presidency should have been unwilling to discuss with the Committee of a national Parliament an initiative to which we, like them, attach great importance.**
5. **We recommend this report to the House for debate.**

¹ See paragraph 21 below for “enhanced cooperation” in the sense in which this expression is used in the Treaty on European Union.

² *Evidence from the Ambassador of the Federal Republic of Germany on the German Presidency*, 10th Report, Session 2006–07, HL Paper 56, page 6.

CHAPTER 2: BACKGROUND

6. The Prüm Treaty³ is an agreement between Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria

“on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal immigration.”

It was signed at Prüm on 27 May 2005. It is perhaps not a coincidence that the Contracting States chose to conclude the Treaty at a small town not far from Schengen, though on the German side of the border. Indeed, the Treaty is sometimes, inaccurately, known as Schengen III. Five of the parties to Prüm were the five parties to the 1985 Schengen Agreement and the 1990 Schengen Convention. As in the case of Schengen, those States had ambitions to extend their agreements to the other Member States in due course. However Prüm is not part of the Schengen acquis, and the differences between Prüm and Schengen are greater than the similarities.

7. The initiative for the negotiations which led to the signing of the Treaty came initially from Germany and Austria, joined by the Benelux States. France and Spain joined only at the last moment. The negotiations were given very little publicity.⁴ The Treaty entered into force between Austria and Spain on 1 November 2006, and between those States and Germany on 23 November. Luxembourg has ratified it, and the ratification processes in the other three States party are well advanced. Four other States applied last year to accede: Finland, Italy, Portugal and Slovenia.

The main provisions of the Prüm Treaty

8. The principal purpose of the Treaty is to improve the exchange of information between the Contracting States, particularly by giving reciprocal access to national databases containing:
- DNA profiles;
 - fingerprints; and
 - vehicle registration data.
9. These provisions are in Chapter 2 of the Treaty. Each Contracting State must ensure availability of these data and allow other Contracting States access to the data with the power to conduct automated searches. As in the case of the Schengen Information System (SIS), the first contact is on a “hit/no hit” basis: “Does another State have comparable data to match the data I have?” In the case of a hit, the next step is to seek further information

³ In all four authentic texts (German, Spanish, French and Dutch) it is called a Treaty. The official English translation prepared by the Council (Document 10900/05) refers to it as the “Prüm Convention”, but the Implementing Agreement between the seven Contracting States (Document 5743/07), for which English is an authentic language, refers to it as a Treaty. The draft Decision of 27 February 2007 (Document 6566/07), which is agreed by the jurist-linguists, refers to it as the “Prüm Treaty”. Since this will be its title in any future instrument for which English is an authentic or official language, this is what we have called it in this report, except where we are quoting documents which refer to it as a Convention. We have also sometimes referred to it simply as “the Treaty”, or just “Prüm”.

⁴ On 17 October 2005, five months after the signature of the Treaty, the President of the European Parliament admitted in his opening speech at a meeting of the European Parliament and national Parliaments that he had not heard of the Treaty.

from the contact point designated by the other State for the supply of further data, rather on the lines of SIRENE.⁵

10. Chapters 5 and 6 include provisions on joint operations between the officers of Contracting States, including the carrying of arms, with the permission of the other State; and operations across the border of a neighbouring State without that State's prior permission "in the event of imminent danger".⁶ There are provisions on the use of arms and the wearing of uniforms on such occasions. There is a general provision for cooperation on request.
11. All these are matters which, in an EU instrument, would be the subject of third pillar measures. There are also, in Chapters 3 and 4, provisions which would, in an EU instrument, be first pillar measures. These are the deploying of air marshals on aircraft (and the carrying by them of arms); and the creation of a network of immigration liaison officers to help combat illegal migration.⁷
12. The exchange of information, particularly by reciprocal access to national databases, must be subject to accountability. It needs appropriate guarantees as to the accuracy and security of the data, as well as procedures for recording data exchanges, and restrictions on the use of information exchanged. These provisions are in Chapter 7. We consider them in more detail in Chapter 4 of this report.

The principle of availability

13. The provisions of Chapter 2 of the Treaty on reciprocal access to information held by another State are, in effect, based on the principle of availability. This principle means that "throughout the Union, a law enforcement officer in one Member State who needs information in order to perform his duties can obtain this from another Member State, and that the law enforcement agency in the other Member State which holds this information will make it available for the stated purpose."⁸ If the information is available, it must be provided; the grounds for declining to do so are extremely limited.
14. The Hague Programme, which was approved by the European Council on 5 November 2004 and set out the EU's priorities in the field of justice and home affairs for the following five years, invited the Commission to present by the end of 2005 legislation to implement the principle of availability which would be operational by 1 January 2008. The Commission put forward its proposal for a Framework Decision on the exchange of information under the principle of availability on 14 October 2005.⁹ This went wider than the Prüm Treaty, covering not just DNA profiles, fingerprints and vehicle registration data, but also:

⁵ The working of the SIS is fully explained in Chapters 2 and 3 of our recent report *Schengen Information System II (SIS II)* 9th Report, Session 2006–07, HL paper 49. SIRENE (Supplementary Information Request at the National Entry) is explained in paragraph 55 of that report.

⁶ These provisions are not unlike the "hot pursuit" provisions in Article 41 of the Schengen Convention, which apply to the Schengen States but not to the United Kingdom or Ireland.

⁷ First pillar measures are those which have the EC Treaty as their legal base. Third pillar measures are those which have as their legal base Title VI of the Treaty on European Union: Provisions on Police and Judicial Cooperation in Criminal Matters.

⁸ The Hague Programme, paragraph 2.1, agreed by the European Council on 4–5 November 2004.

⁹ Document 13413/05, enclosing COM(2005)490 final.

- ballistics;
 - telephone numbers and other communications data; and
 - minimum data for the identification of persons contained in civil registers.¹⁰
15. Under the Hague Programme the intention was to create an EU-wide right to access data collected and retained in national police databases. Hence in the Commission proposal “availability of information” means that all available national information should be directly accessible on line to the authorities of other Member States. Jonathan Faull, the Director-General for Justice, Freedom and Security at the Commission, told us that “Prüm will go some way, not the whole way, to doing that.” (Q 83) The European Data Protection Supervisor (EDPS) went further, explaining that “Prüm is of a fundamentally different nature”: it does not give direct access, but indirect access through reference data. (p 31) In oral evidence Mr Hijmans, the legal adviser to the EDPS, added that “Prüm is not really [about] availability” because it does not eliminate borders for police information. (Q 127) We set out in Appendix 6 the similarities and differences between the current texts.
16. In its Explanatory Memorandum for the Framework Decision to implement the principle of availability, the Commission explained that there were similarities between its proposal and the Prüm Treaty, but pointed out that that the Treaty was more limited in scope, applied to only seven Member States, and was still subject to ratification.
17. When the interior ministers of the G6—Germany, France, the United Kingdom, Italy, Spain and Poland—met at Heiligendamm in March 2006 under German chairmanship, the Conclusions of the meeting included the following passage:
- “4. Principle of availability*
- The ministers again highlighted the importance of significantly improving cross-border information exchange between law enforcement authorities, as already set out in the Hague Programme. To rapidly achieve this objective, they advocate focusing on DNA, fingerprints and motor vehicle registration data. At the same time they stressed that the promising model offered by the Prüm Treaty, including online requests and hit/no hit access, should be considered at EU level as soon as possible.
- The ministers underscored that rapid implementation of the availability principle must not depend on the adoption of a framework decision on data protection in the third pillar.”
18. In Chapter 3 of our report on the Heiligendamm meeting¹¹ we drew attention to this passage, and were particularly critical of the attempt to

¹⁰ The expression “civil registers” is not defined in the Commission text. In a letter of 15 December 2005 to the House of Commons European Scrutiny Committee Paul Goggins MP, then the Parliamentary Under-Secretary of State at the Home Office responsible for these matters, said that this category of information was included because of the value to law enforcement of access to data which could identify or confirm who people were. He understood that electoral registers and registers of births, marriages and deaths were examples of registers held in the United Kingdom which might be of this type (House of Commons European Scrutiny Committee, Fourteenth Report of Session 2005–06, HC Paper 34-xiv).

¹¹ *Behind Closed Doors: the meeting of the G6 interior ministers at Heiligendamm*, 40th Report, Session 2005–06, HL Paper 221.

divorce progress on the principle of availability from adoption of a third pillar Data Protection Framework Decision. Now, with the benefit of a year's hindsight, this statement can be seen as the first sign of the German chairmanship attempting to sideline the EU initiative on the principle of availability in favour of "the promising model offered by the Prüm Treaty"—an attempt which has been conspicuously successful. It is the Commission proposal which risks becoming redundant; there have been no further negotiations on it, and Ms Joan Ryan MP, the Parliamentary Under-Secretary of State at the Home Office, told us in her written evidence that the Commission proposal was being held in abeyance. (p 1) However in oral evidence she said that the Government "want that Framework Decision to go ahead" (Q 32); but she did not say whether the Government would be pressing for the negotiations to be resumed or, if so, how the differences with the Prüm Treaty would be reconciled.

Lawfulness of the Treaty

19. Questions have been raised about the legality of the Prüm Treaty, on the ground that it may be contrary to the implementation of Community objectives. Article 10 of the EC Treaty provides:

"[Member States] shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty".

In a Briefing Note prepared at the request of the LIBE Committee of the European Parliament in January 2006¹² Dr Thierry Balzacq¹³ argued that Prüm breaches the principle of loyal cooperation of Article 10. In the States in which it is in force, Prüm sets up a regime which in his view is inconsistent with the Commission proposal on the principle of availability, and which prevents the latter from ever being brought into effect.
20. In written evidence to us on behalf of the Centre for European Policy Studies (CEPS) Professor Elspeth Guild, Professor of European Migration Law at Radboud University, Nijmegen, had told us that "[T]ransferring privately negotiated treaties into the EU acquis does not fulfil the requirements of legitimacy. It appears underhanded and dishonest." In oral evidence she confirmed this view, and said that in relation to its first pillar provisions on immigration the Prüm Treaty was in breach of Article 10. (Q 50) Mr Tony Bunyan, the Director of Statewatch, pointed to the practical difficulties of such an approach: "if you have 15 Member States who are signing up to, for example, sky marshals, how can that work within the European Union? You can have sky marshals on some flights between some countries but not sky marshals on other flights." (Q 49)
21. Mr Peter Hustinx, the European Data Protection Supervisor, argued in his written evidence (p 31) that the Contracting States "evaded the substantive and procedural requirements of enhanced cooperation" which have been included in the EU Treaty since its amendment by the Treaty of Nice.¹⁴ For

¹² IP/C/LIBE/FWC/2005-08

¹³ Research Fellow at the Centre for European Policy Studies (CEPS).

¹⁴ The Treaty of Nice amended Article 40 of the Treaty on European Union (TEU), and added Articles 40a and 40b. Together these Articles provide a way for Member States to establish enhanced cooperation between themselves with "the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice". The procedure is governed by Title VII of the TEU. It requires an initiative of at least

these and other reasons he believes that it is arguable that “the Prüm Convention breaches the law of the European Union”. But in his view this can never be more than a theoretical argument, since neither the European Court of Justice nor any other court has jurisdiction to rule on this question. Jonathan Faull regretted that the initiative had not been taken within an EU framework from the beginning, and confirmed that it could have been taken under enhanced cooperation.¹⁵ (Q 83)

22. **We believe that for seven Member States to enter into an agreement including first pillar matters falling squarely within EC competence may have breached the letter, and certainly breached the spirit, of Article 10 of the EC Treaty.**

The approach of the United Kingdom

23. The Government’s approach to Prüm might be described as cautious. When Ms Ryan came to give oral evidence we asked her whether the United Kingdom had been invited to take part in the negotiations leading to the signature of the Prüm Treaty when these first began, and if not, what steps the Government took to be included in the negotiations. Ms Ryan told us that the United Kingdom had indeed been invited to take part, but had not done so. She did not suggest that the Government had thought that such an agreement would be unlawful or even undesirable; the reason she gave was that the draft Treaty contained provisions which the Government found unacceptable.
24. We were perplexed by this reply, and pressed the Minister to explain why, if there were provisions in the draft which were unacceptable, the Government had not taken part in the negotiations and attempted to have those provisions amended or deleted when there was an opportunity to do so, rather than waiting until the Treaty was signed. Ms Ryan was unable to give us a satisfactory answer to this question, merely repeating her original reply. (QQ 2, 6)
25. A Government taking part in treaty negotiations is not bound to sign a draft treaty which emerges from these negotiations; and if it does sign, is not obliged to ratify the treaty.¹⁶ It may have been likely that the negotiations on Prüm would result in a draft acceptable to the majority of the Member States taking part in those negotiations, but unacceptable to the United Kingdom; but this was not, in our view, a reason not to take part in those negotiations.
26. Once the Treaty was concluded without the United Kingdom as a signatory, the question arose whether the Government should attempt to accede to it. On 9 January 2006, ten months before the Treaty entered into force, Paul Goggins MP, then the Home Office Minister responsible, told us in a letter to our Chairman that “the Government is currently considering

eight Member States. It is clear from subsequent events that the seven signatories of the Prüm Treaty would have had no difficulty in finding an eighth State to join them if they had wished to use this procedure. In fact it has never been used.

¹⁵ However in a second briefing note prepared for the LIBE Committee in July 2006 (IP/C/LIBE/FWC/2005–22–SC2) Dr Balzacq argues that, given that Articles 20–23 of the Prüm Treaty deals with issues which *ratione materiae* fall within the Schengen *acquis*, enhanced cooperation would not have been open to the signatory States.

¹⁶ Perhaps the best example of this is the failure by the United States to ratify the Kyoto Protocol. Signature of a treaty does, in international law, involve an undertaking not to act in a manner contrary to the aims of the treaty, but no more.

whether the UK should accede to the Prüm Treaty”. Two months later, on 14 March 2006, Baroness Scotland of Asthal, the Minister of State at the Home Office, when asked by Lord Wallace of Saltaire whether the Government proposed that the United Kingdom should become a party to the Treaty, replied:

“My Lords, the Government are looking closely at the Prüm Convention. No decision has yet been taken. We expect to come to a preliminary view in the next few months.”¹⁷

27. On 29 November 2006, when the Treaty was already in force between three of the signatories, Ms Ryan told the Sub-Committee inquiring into SIS II: “We believe there are potential benefits for signatories to the Prüm Convention, so we are looking at that very actively at the moment”.¹⁸ And in evidence to this Committee on 19 December 2006 the Rt Hon Geoff Hoon MP, the Minister for Europe, said: “The Government is seriously considering signing up to the Prüm Convention and intends to enter into formal discussions with the existing signatories in the near future”.¹⁹
28. **In the space of a year four ministers told us that the question of accession to Prüm was under “close”, “active” and “serious” consideration. We do not understand why it should have taken so long for the Government to conclude that there was at least one provision of the Treaty to which the United Kingdom could not agree.**

Prüm: the way forward

29. The time for accession is in practice past. It is now clear that Prüm was never more than a stepping stone to an EU-wide instrument. The first clue can perhaps be found in the Treaty’s opening words:
- “The High Contracting Parties to this Convention, being Member States of the European Union,”
- which make clear the capacity in which the Contracting States are signing: not just as independent sovereign States, but also as Member States of the EU.²⁰
30. Article 1 explains the reason for this. Not only is it open to any Member State of the EU to join the Convention, but:
- “Within three years at most following entry into force of this Convention, on the basis of an assessment of experience of its implementation, an initiative shall be submitted, in consultation with or on a proposal from the European Commission, in compliance with the provisions of the Treaty on European Union and the Treaty establishing the European Community, with the aim of incorporating the provisions of this Convention into the legal framework of the European Union.”
31. Schengen also started as an agreement between a small number of Member States, impatient at the slow progress of the EU (then EC), going forward at

¹⁷ Official Report, 14 March 2006, col. 1098.

¹⁸ *Schengen Information System II (SIS II)*, 9th Report, Session 2006–07, HL paper 49, Q602.

¹⁹ *Evidence of the Minister for Europe on the Outcome of the December European Council*, 4th Report, Session 2006–07, HL Paper 31, Q 25.

²⁰ Dr Thierry Balzacq, briefing note prepared at the request of the LIBE Committee of the European Parliament in January 2006.

their own speed, secure in the knowledge that if they could persuade enough others to join, the rest would have to follow, so that eventually the provisions they had agreed became part of EU law. The 1985 Schengen Agreement said nothing at all about other Member States. The 1990 Schengen Convention, implementing that Agreement, provided that “Any Member State of the European Communities may become a Party to this Convention”, but said nothing about attempting to incorporate it into EU law; it took another Treaty to achieve this.²¹ The Contracting States to the Prüm Treaty have been more brazen about it, making their ambitions clear from the outset. In the next chapter we explain how those ambitions are being pursued.²²

²¹ Protocol No 2 to the Treaty of Amsterdam, integrating the Schengen acquis into the framework of the European Union.

²² With the further enlargement of the European Union and the creation of an increasing number of regional groupings, and groups like the G6 not based on a geographical region, it is probable that more initiatives of this type will be proposed. It remains to be seen whether they would use the formal Treaty enhanced cooperation procedure.

CHAPTER 3: THE GERMAN PRESIDENCY'S INITIATIVE

32. At the meeting of the G6 interior ministers in Stratford-upon-Avon on 25 and 26 October 2006²³ Germany was represented by its interior minister, Dr Wolfgang Schäuble. Within ten days of Germany taking over the EU Presidency, in a speech to journalists in Berlin on 11 January 2007 Dr Schäuble said that he accepted that the G6 caused a degree of mistrust with those 21 partners which do not take part in the meetings, but thought that if too many issues were tackled in formal Council meetings, not all Member States would be satisfied with the degree of efficiency of the decision-making process. As an example of the benefits of informal structures he highlighted the Prüm Treaty. The seven signatory States had simply thought that EU procedures would take too long, and clinched their own deal; but now that the Treaty was there, the German Presidency would see if it could be put into an EU legal framework.

The Dresden meeting

33. Any questions about the extent to which an EU-wide instrument would differ from one extending to only seven Member States were rapidly answered. Four days later an informal meeting of justice and home affairs ministers of all the Member States was held in Dresden. The first agenda item at the first plenary session on 15 January 2007 was a Presidency paper whose topic was: “Stepping up cross-border police cooperation by transposing the Prüm Treaty into the legal framework of the EU”. After three pages extolling the virtues of the Treaty—it “amounts to a *quantum leap*²⁴ in the cross-border sharing of information”—a single question was put to ministers: “Do you support the planned initiative of the Prüm contracting states to incorporate the contents of the Prüm Treaty into the EU law 1-to-1?”
34. By the end of the day Dr Schäuble was able to say:
- “I am pleased that the proposal to transpose the Prüm Treaty into EU law, which was submitted informally by the German Presidency together with the other Prüm signatories and the European Commission today, has been so very well received. With this in mind, we want to take up formal discussions at the next meeting of justice and home affairs ministers in Brussels on 15/16 February.”
35. We explained in paragraph 30 that any initiative to incorporate Prüm has to be “in consultation with or on a proposal from the European Commission”. The Presidency paper stated that “[T]he German Presidency, together with its Prüm partners and the European Commission, wishes to initiate the conversion of the Prüm Treaty into EU law.” Jonathan Faull told us that there the Commission had regularly attended meetings of working groups. (Q 89)
36. We do not question the sincerity of the views of the German Presidency, nor that Dr Schäuble was genuinely of the view that the provisions of the Treaty would transform the effectiveness of police cooperation on counter-terrorism and serious crime in those States where it is in force. The Presidency clearly

²³ This meeting was the subject of our report *After Heiligendamm: doors ajar at Stratford-upon-Avon*, 5th Report, Session 2006–07, HL Paper 32.

²⁴ Bold in the original.

has no problem extrapolating this to the whole of the EU. At the time of the Dresden meeting the Treaty had been in force between Germany and Austria for less than two months, but the paper presented to ministers at that meeting stated:

“Already at this early stage, the automatic information exchange has brought about noticeable operational success: for instance, the German authorities matched DNA profiles of open cases against data held by the Austrian authorities and found hits in 1510 cases. In this context 710 open traces from Germany could be attributed to persons known to the Austrian criminal prosecution authorities. Broken down by types of crime, 41 hits in homicide or murder cases, 885 hits in theft cases, 85 hits in robbery or extortion cases were found. Prosecution authorities are confident that the number of hits will increase constantly as further Prüm countries take part in this process, and that they will thus be able to solve numerous other open cases.”

37. Some of these figures were quoted to us in evidence by Ms Ryan, who (with Baroness Ashton of Upholland) represented the United Kingdom at Dresden. (Q 20) We agree that if a significant proportion of these cases resulted in the identification, extradition, prosecution and conviction of criminals who would not otherwise have been identified, this was a highly satisfactory result. However the implication is that this result, obtained after only two months, would be repeated in future months. Tony Bunyan, the Director of Statewatch, described this as “a headline-making figure”, and pointed out that this apparently impressive result followed from the fact that there was a large amount of information about earlier serious crimes which was available for the first time to the prosecuting authorities. Once the backlog of crimes was cleared up, results would not continue on anything like this scale. (Q 57) Jonathan Faull admitted that this could be the case. (QQ 95, 96)
38. In our view the statement in the Presidency paper that “Prosecution authorities are confident that the number of hits will increase constantly as further Prüm countries take part in this process” is highly misleading. It seems to us that each time a further country takes part there will be another backlog to clear up, and this will produce apparently impressive results; but thereafter the figures are bound to be significantly lower. It is hardly to be expected that every month twenty or so homicides in Germany will be cleared up from data made available by the Austrian authorities.
39. Moreover, there is no reason why this result could not have been achieved by a Framework Decision on the principle of availability. Given that the scope of this Framework Decision, and the data it covers, would go considerably wider, the result might well have been surpassed.
40. The German Presidency’s enthusiasm for the results achieved by matching DNA profiles held in its database with those held by the Austrians ignores other problems which are likely to arise when the same exercise is carried out among 27 Member States. The absence of a harmonised approach to the collection and retention of data means, for instance, that there will continue to be differences between the grounds on which Member States collect DNA and fingerprints, and the length of time they are allowed to retain these data under their national law. Thus we were told by Tony Bunyan that “in most European Union States [fingerprints and DNA] are kept and held for serious crimes, whereas in the UK we are keeping fingerprints and DNA for all

crimes, however minor”. Since January 2006 it has been possible for persons arrested to have their DNA and fingerprints taken compulsorily even if they are not charged. (Q 76) The Home Office has now proposed in a consultation paper that this should be possible if people are only suspected of a crime, even though they are not arrested.²⁵

41. It therefore comes as no surprise that the United Kingdom has the largest DNA database in the world, half as large again as all the other Member States put together.²⁶ Jonathan Faull confirmed that this was likely to lead to the United Kingdom exchanging DNA data more widely than other Member States. (Q 102) Officials of a country which holds DNA data only for serious crimes will inevitably start with the presumption that DNA data are held in the United Kingdom for the same purpose, and perhaps put at risk those whose DNA is held because they have committed only a minor crime, or perhaps no crime at all. The Assistant EDPS, Mr Bayo Delgado, believes that in such cases “the interpretation of the result [of a match] may be in need of some clarification.” (Q 126) Nothing in the Minister’s evidence to us suggests that the Government are concerned about this.
42. **The threshold for holding DNA profiles on the United Kingdom DNA database is far lower than in any other Member State, and the proportion of the population on the database correspondingly far higher. The Government should as a matter of urgency examine the implications of DNA exchanges for those on the United Kingdom database.**

The draft Prüm Decision

43. Within four days of the Dresden meeting the Council Secretariat had published a Working Paper containing a first draft of a Council Decision incorporating the Convention into EU law.²⁷ The eighth and ninth recitals of that draft read:

“(8) For effective international cooperation it is of fundamental importance that precise information can be exchanged swiftly and efficiently. The aim is to introduce procedures for promoting fast, efficient and inexpensive means of data exchange. For the joint use of data these procedures must be subject to accountability and incorporate appropriate guarantees as to the accuracy and security of the data during transmission and storage as well as procedures for recording data exchange and restrictions on the use of information exchanged.

(9) These requirements are satisfied by the [Prüm Convention] ... In order that both the substantive requirements of the Hague Programme can be fulfilled for all Member States and its targets in terms of time-scale can be achieved, the essential parts of the Prüm Convention need to be made applicable for all Member States. This Council Decision is therefore based on the main provisions of the Prüm Convention.”

²⁵ Modernising Police Powers: Review of the Police and Criminal Evidence Act (PACE) 1984, Home Office, March 2007, paragraphs 3.31–3.38.

²⁶ DNA Expansion Programme 2000–2005: Reporting Achievement (Home Office, October 2005). At that date 5.24% of the UK population was on the database, compared to 0.5% in the United States. The figure for the EU as a whole was 1.13%. Austria is the Member State with the next highest proportion, 0.98%.

²⁷ General Secretariat of the Council, Working Document of 19 January 2007. We refer hereafter to a draft of a Decision to incorporate the Prüm Treaty into EU law as a “Prüm Decision”.

44. The references to the “essential parts” and the “main provisions of the Prüm Convention” follow from the fact that, as explained in paragraph 11 above, while most of the Treaty consists of provisions which might be described as third pillar provisions, Chapters 3 and 4, which deal with the deploying of air marshals on planes and the creation of a network of immigration liaison officers to help combat illegal migration, are first pillar provisions, and cannot therefore be included in a Decision whose legal basis is Title VI of the Treaty on European Union. These chapters, because they do not feature in any draft of the Prüm Decision, are set out in Appendix 4 to this report. Apart from those chapters, the substantive provisions of the draft are not merely “based on the main provisions of the Prüm Convention”, but replicate them word for word.
45. This draft of the Prüm Decision was considered by the Article 36 Committee at a meeting on 25–26 January. This is a Coordinating Committee of senior officials set up under Article 36 of the Treaty on European Union “to give opinions for the attention of the Council, either at the Council’s request or on its own initiative”, and to contribute to the preparation of Council discussions in Title VI matters. The Committee’s opinions are not made public, but they clearly did nothing to impede the process of incorporation of Prüm.

The February Council

46. On 6 February a revised draft of the Prüm Decision,²⁸ put forward by the Presidency and twelve other Member States, was published for consideration at the formal Justice and Home Affairs Council on 15 February. If this had been a Commission initiative, the proposal would have been accompanied by an explanatory memorandum and, crucially, by an impact assessment. The Member States putting it forward, though under no obligation to provide an explanatory memorandum or impact assessment, might have realised this would be useful not just to the other Member States but to all of those who might be interested, including national Parliaments.
47. At the February meeting the Council (at which the United Kingdom was represented by Baroness Scotland of Asthal and Ms Ryan) formally agreed on:
- “the integration into the EU legal framework of the parts of the Prüm Treaty relating to police and judicial cooperation in criminal matters [Title VI of the EU Treaty, the so-called ‘third pillar’] with the exception of the provision relating to cross-border police intervention in the event of imminent danger [Article 18]. This last particular issue will be further examined by the Council at one of its forthcoming sessions.”²⁹
48. A third draft of the Prüm Decision was prepared on 27 February.³⁰ The significant difference from the draft considered by the Council is the omission of the former Article 18, removed from that draft in the circumstances we describe in paragraphs 60 to 66 below. We consider the consequences of that omission in the following chapter.

²⁸ Document 6002/07.

²⁹ Press release of 2781st Council Meeting, document 5922/07.

³⁰ Document 6566/07.

49. Another draft was prepared by the Presidency on 14 March 2007 in anticipation of a further meeting of the Article 36 Committee, and this is the draft which we have printed in Appendix 3.³¹ There are no significant changes of substance, but enough changes of detailed wording for the recitals to refer, not to the “essential parts”, but to “the substance of the essential parts” of the Prüm Treaty. The “main provisions” have become “provisions based on the main provisions”.³²

Relationship with other EU instruments

50. The Prüm Treaty already overlaps, and the Decision when adopted will overlap, with three EU instruments. Two of these, the draft Framework Decisions on data protection and on the exchange of information under the principle of availability, have already been discussed.³³ Perhaps because they are still in draft, they do not merit a mention in the recitals to the Decision, which therefore gives no clue as to whether or to what extent it will be related to these instruments, or how any conflict between them will be settled.
51. However a third instrument has already been adopted. This is the Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States,³⁴ under which they must ensure that information and intelligence will be provided to authorities of other Member States on request. The existence of this Framework Decision is acknowledged in recitals (7) and (11) of the Prüm Decision. We understand from Jonathan Faull that there is a sense that the two instruments are complementary, but that it is too early to tell precisely how they will co-exist, given that the new administrative procedures for the exchange of information under Framework Decision 2006/960/JHA have not yet been tested. (Q 113)³⁵
52. If and when the Prüm Decision is adopted, there will be three third pillar instruments dealing in different ways with the exchange of information between law enforcement authorities of different Member States. As we have said in paragraph 15 above, we set out in Appendix 6 the similarities and differences between the current texts. We believe that this is an unsatisfactory situation. Those who are attempting to make use of this legislation in the fight against crime should have at their disposal provisions which are clear, simple and straightforward, not complex, cumbersome and inconsistent as they are now.
53. We asked Jonathan Faull whether consolidation of these laws would not in due course be desirable. While agreeing in principle, he doubted whether Member States would ever be able to agree to a strict consolidation; they would be unable to resist the temptation of seeking to negotiate

³¹ Document 7273/07.

³² Some of the detailed changes are less than felicitous. Articles 8 et seq of the Treaty, dealing with “fingerprinting data”, in the Decision refer to “dactyloscopic data”. In the latest draft of the Decision there is a recital which refers to “the architectonics of comparing anonymous profiles”.

³³ Paragraphs 13 to 18 above.

³⁴ OJ L386 of 29 December 2006, page 89.

³⁵ In paragraph 32 of his Opinion of 4 April 2007, to which we refer in paragraphs 82 et seq below, the European Data Protection Supervisor (EDPS) “regrets the fact that the present initiative is issued without a proper evaluation of the existing measures on the exchange of law enforcement information”. Among the “existing measures” to which he refers are the Schengen Information System (SIS).

improvements, and in doing so would increase the confusion. (Q 114) We agree that, in the absence of a special procedure for strict consolidation without amendments,³⁶ this is a very likely outcome. We hope however that the point will not be lost sight of. Meanwhile, **law enforcement authorities in all the Member States must be provided with the same clear guidance and training which will enable them to operate the new laws responsibly in the fight against crime.**

Timetable

54. The German Presidency at one time had ambitions that this Decision should be agreed at the JHA Council on 19–20 April, but this would have been to ignore the role of the European Parliament. Although the Parliament does not—yet—have co-decision powers in third pillar matters, Article 39 of the Treaty on European Union does require the Council to consult the Parliament, and to give it at least three months to deliver its Opinion.
55. On 28 February the Secretary-General of the Council wrote to the President of the European Parliament to initiate the formal consultation of the Parliament on the draft of 27 February. The letter informed the Parliament that the Council was still debating the approach to be adopted in relation to Article 25 of the Treaty—“measures in the event of immediate danger”, and would inform the Parliament of the outcome of its discussions without delay.
56. The letter asks the Parliament to deliver its Opinion no later than 7 June 2007. This gives the Parliament barely more than the three month minimum required by Article 39 TEU. It gives the Council two working days to consider the Opinion before the last JHA Council of the German Presidency on 12–13 June. Since the Presidency intends, or at least hopes, to have the Decision adopted at that Council, and since the instruments to be adopted have to be circulated a little time in advance, it is plain that the Presidency is complying with the formalities of the Treaty, but has little intention of being influenced by the views of the Parliament.³⁷
57. **It is understandable that a State which holds the Presidency should wish to make use of that opportunity to further legislative proposals which it is particularly anxious to see implemented. This should not however be seen as a reason for cutting short full consideration by all the Member States. The timetable for initiatives by Member States should be the same as for Commission proposals.**

³⁶ The Parliamentary procedure under the Consolidation of Enactments (Procedure) Act 1949 is a good example.

³⁷ In paragraph 18 of his Opinion the EDPS states that the procedure chosen by the Presidency “denies all need for a demographic and transparent legislative process since it does not even respect the already very limited prerogatives under the third pillar”.

CHAPTER 4: WHAT SHOULD THE UNITED KINGDOM BE DOING?

58. In their response to the Heiligendamm report³⁸ the Government suggested that “if the Prüm treaty reaches the EU it will be opened up to the same negotiations and processes as all other proposals and a single Member State can prevent it from being enacted.” It is true that the Prüm Decision, being a third pillar measure, must be adopted unanimously or not at all;³⁹ but this is only half the truth. The real picture is that the Decision replicates a deal agreed between a group of Member States, and already ratified by some of them and in force between them. It was the firm and stated intention of those States that it should become binding on the other Member States without amendment; and this, with a single exception, is what they have so far achieved.
59. The Government, being broadly supportive of the measure, may not wish the United Kingdom to be one of the States—perhaps the only State—preventing its adoption altogether. But this does not mean that it should play a passive role in the negotiations. The Government have already shown that there is one provision they are not prepared to accept. We believe that there are four other matters which the Government should be actively pursuing.

Measures in the event of immediate danger

60. Article 18 of the draft of the Decision considered by the Council on 15 February,⁴⁰ the equivalent of Article 25 of the Treaty, would have allowed officers⁴¹ of one Member State to cross the border into another Member State without that State’s prior consent “in urgent situations” to take “any provisional measures necessary to avert immediate danger to life or limb”.⁴²
61. In her letter to the Chairman, written on 2 February in advance of the February Council, Ms Ryan wrote:

“Article 18 ... is one of the reasons that the UK was cautious about signing the original Prüm Convention ... The Article is designed for States with extensive land borders who may have a situation, such as a train crash, which would need to be dealt with by the nearest police. We therefore doubt that it is operationally feasible or desirable for the UK.

In addition, whilst the focus is on urgent situations, the Article does not preclude ‘hot pursuit’ in a situation such as kidnapping where there may be ‘immediate danger to life or limb.’ The UK does not participate in Article 41 of the Schengen Acquis on ‘hot pursuit’. Furthermore, Article 18(4)⁴³ requires signatories to accept liability for foreign officers operating in our territory. This would require primary legislation.

³⁸ The response to our report *Behind Closed Doors: the meeting of the G6 interior ministers at Heiligendamm* (40th Report, Session 2005–06, HL Paper 221) is reprinted as Appendix 2 to our report *After Heiligendamm: doors ajar at Stratford-upon-Avon* (5th Report, Session 2006–07, HL Paper 32).

³⁹ Article 34(2) of the Treaty on European Union.

⁴⁰ This Article is reproduced in Appendix 5 to this report.

⁴¹ “Officers” is the word used in the official English text of the Prüm Treaty and in the text of the Prüm Decision of 6 February. The Article does not feature in the text of 27 February. “Officers” is used as shorthand for “designated officers and other officials”: see Article 17(1) of the Decision.

⁴² In Article 25 of the Treaty this reads “...to avert imminent danger to the physical integrity of individuals”. There is no difference between the German texts (“Gefahr für Leib oder Leben”).

⁴³ Sic: in fact Article 18(5).

Therefore we will seek to ensure our concerns are addressed in negotiations, possibly exploring the possibilities of an opt out or the removal of the Article altogether.”

Ms Ryan repeated some of these concerns in her oral evidence. (QQ 6, 16–17)

62. At the February Council the Government, to their credit, voiced their concerns about this provision, and insisted on its removal from the draft Decision. This has been done: the article was omitted from the draft of 27 February which was forwarded to the European Parliament for its Opinion.
63. We agree that those drafting Article 18 certainly did not contemplate its applying to maritime borders; the constant references to “crossing the border” are proof of this. But if left in the Decision unamended, this provision would arguably allow foreign police officers and other foreign officers and officials to enter and act in this country uninvited.⁴⁴ Given our maritime borders it would be unnecessary and undesirable. Any arrangements affecting the border between the United Kingdom and Ireland have been made and should remain on a bilateral basis.
64. Portugal has suggested that the mandatory provisions of Article 18 might be replaced by a provision allowing Member States to agree on a bilateral basis to allow officers of another State with a common border to enter their territory without prior permission “in urgent situations”. There is a precedent for such a provision in Article 39(5) of the Schengen Convention.⁴⁵ Ms Ryan referred to this in evidence (Q 17) but did not state whether the United Kingdom would support this initiative. Mr Faull mentioned an alternative solution under examination which would require Member States with a common border to conclude separate bilateral agreements about measures they would take in the event of an immediate danger in their border regions. (Q 106)
65. **We congratulate the Government on having successfully insisted on the removal from the Prüm Decision of a general provision which would allow designated officers and officials of one Member State to enter the territory of another Member State without prior permission.**
66. **Since unanimity is needed for the adoption of the Prüm Decision this shows that, given the will, the Government should be able to secure agreement on other matters which need to be settled before the Decision can be adopted.**

Principle of Availability

67. We explained in paragraph 14 that the draft Framework Decision covered some data not covered by Prüm: ballistics, communications data and identification data in civil registers.⁴⁶ We do not know whether those

⁴⁴ French and Belgian customs officers are already present at the Eurostar terminal of Waterloo station in London, but that of course is by invitation.

⁴⁵ “The provisions of this Article [on police cooperation] shall not preclude present or future bilateral agreements between Contracting Parties with a common border.”

⁴⁶ The six types of information had been identified by the Council in Decision 7641/2/05 of 14 April 2005. At the meetings of the Article 36 Committee on 8 December 2005 and 3 February 2006 a majority of Member States opted for a progressive implementation of the principle of availability starting with the

negotiating the Prüm Treaty took a conscious decision to exclude these data, and if they did, what the reason may have been. An explanatory memorandum could have given the reason for this.

68. Whatever the reason, we need to know what is to be the fate of information, for example data on ballistics, which may well be important for the prevention and detection of crime, and which would have been available under the Framework Decision, but will not be available under Prüm. Despite the importance apparently attached by the Government to progressing the Framework Decision (Q 32)⁴⁷ we see no prospect of negotiations on this resuming once the Prüm Decision has been adopted. The obvious solution would be to amend the Prüm Decision to include ballistics and the other categories of information not so far included. There is no suggestion that the States promoting that Decision have given any thought to this.
69. We asked Jonathan Faull whether the Commission believed that ballistics, communications data and identification data in civil registers should have been included in the Prüm Treaty. He was unable to explain why these categories of data had been left out, but he believed that their exchange under the principle of availability remained a priority for the EU. (Q 110)
70. There is another way in which the Framework Decision is (or would have been) an improvement on Prüm, and that is the involvement of Europol. Europol is an agency created by a Convention between all the Member States, and as such could not be given access to data by a multilateral treaty between seven of those States; yet under the Framework Decision it would have had access to data available to all Member States. According to Jonathan Faull, this point is likely to be taken up in the wider discussions on the future role of Europol. (Q 112)
71. **If and when the Prüm Decision is agreed, any matters in the Framework Decision on the principle of availability which have not been adequately dealt with must continue to be the subject of negotiation.**

The cost of implementation

72. If this had been a Commission initiative, there would have been an explanatory memorandum from the Commission which would have given an estimate, however rough, of the cost of implementing the Prüm Decision. But the States whose initiative this is have not done so. While they were under no legal obligation to supply an explanatory memorandum, we believe that they should have done so.
73. **There should be a convention that any legislative proposals by Member States should, like Commission proposals, be accompanied by full explanatory memoranda and regulatory impact assessments.**⁴⁸

exchange of DNA data, and followed by the exchange of fingerprint and vehicle registration data, as well as the other types of information identified by the Council: Document 6259/3/06 of 20 April 2006 from the Presidency to Coreper. For the meaning of “civil registers” see paragraph 14 above.

⁴⁷ See also paragraph 18 above.

⁴⁸ We made a similar recommendation in our report on *Human Rights Proofing EU Legislation*, where we said: “It is our experience that Third Pillar measures commonly raise issues relating to fundamental rights. We have no doubt that impact assessments are particularly important in respect of such proposals. Indeed the failure of Member States to provide background information and explanations for the measure being

74. **Member States which are asked to consider an initiative by some of their number should normally decline to do so unless and until they have been supplied with a full explanatory memorandum covering in particular the estimated cost of the initiative.**
75. Ms Ryan's letter of 2 February states, and the Government's Explanatory Memorandum on the Prüm Decision repeats:
- “Germany has stated that the costs to them of implementing the Prüm Convention, including the provisions that are included in the draft Council Decision, have been in the region of €900,000. We are considering in detail what the financial implications for the UK might be but the initial view of UK experts is that the costs associated with implementing Prüm among all 27 EU Member States may be considerably higher, depending in part on the precise technical arrangements for allowing Member States to link into one another's systems. We are currently exploring with Germany and other existing Prüm participants the basis on which their costings were developed, with a view to further developing our own cost analysis.”
76. In a further letter to the Chairman of 19 April 2007 (p 11) Ms Ryan explains that the question of cost was discussed at a technical workshop at Wiesbaden on 9 March to which the Government sent experts from the DNA National Database, the Police Information Technology Organisation and the Driver and Vehicle Licensing Agency (DVLA). She tells us that the figures used at the meeting “in some cases appear considerably higher than the German or Austrian costs ... the figures from other signatories do not include project or business costs, which can often be some of the most expensive elements.” On the basis of these discussions “the Government estimates that the total start-up cost for the United Kingdom will be in the region of £31 million pounds for the exchange of fingerprint, DNA and vehicle registration data”; but the Minister stresses that “these are informed but necessarily limited estimates of cost based on the information currently available”. She tells us that the Government do not consider the £31 million estimated start-up cost unreasonable “considering the benefits that the draft Council Decision will bring.”
77. What Ms Ryan does not give us is any estimate of the annual cost of running the Prüm system. It seems to us possible that the German assessment of the cost of exchanging information with Austria, whose population is just over 8 million, may be only a fraction of the cost of exchanges with 26 other States whose total population is over 400 million. The cost to the United Kingdom of supplying information to other States may be one of the highest, given the size of its DNA database to which we have referred in paragraphs 40 to 42 above.
78. **The Government should not allow the Prüm Decision to be incorporated into EU law unless and until there is available a reliable estimate of the start-up cost and the running costs of doing so, and then only if they believe that the benefits to the United Kingdom of implementing the Decision justify these costs.**

proposed makes our own scrutiny work that much more difficult and places a further burden on the Government faced with our requests for clarification. We therefore recommend that Member States should carry out impact assessments before bringing forward any proposal under the Third Pillar. Any such proposal should also be supported by a full explanatory memorandum including a section dealing with fundamental rights.” (16th Report, Session 2005–06, HL Paper 67, paragraph 41)

Supervision of operation

79. The draft Decision does not include any provision for the collection of statistics, or for monitoring and evaluating its operation. This is unacceptable in an instrument of this type. The Regulation on the establishment, operation and use of the Second Generation Schengen Information System (SIS II) sets up a Management Authority whose duties include the collection and publication of statistics.⁴⁹ Every two years the Authority has to submit to the European Parliament and the Council a report on the technical functioning of Central SIS II, including its security, and every four years the Commission has to produce an overall evaluation of Central SIS II and of the bilateral and multilateral exchange of information between Member States. We believe that this provides a good model for the sort of supervision which is essential for the Prüm Decision.
80. **The Government should insist on the inclusion in the Prüm Decision of provisions to ensure that its operation is properly monitored. What is required is at the very least:**
- **an obligation on national agencies to produce annual reports, including statistics, on the use of their powers under the Decision; and**
 - **an obligation on the Commission to produce an overall evaluation of the operation of the Decision, for submission to the Council, the European Parliament and national parliaments, to see whether it needs amendment.**

Data protection

81. We have referred in paragraphs 72 to 74 to the desirability of initiatives of Member States, like Commission initiatives, including full explanatory memoranda. **There should be a similar requirement that Member States putting forward initiatives with data protection implications should consult the European Data Protection Supervisor.**
82. Even without such a requirement, the EDPS could have been consulted; but he was not. Nevertheless on 4 April 2007 he sent to the German Presidency a very full Opinion, which was published on 11 April.⁵⁰ We congratulate him on having taken this step; his Opinion makes a number of useful points, many of them repeating views he had already given us in evidence and supporting conclusions we had already reached.
83. Data protection issues in first pillar instruments are governed by the 1995 Data Protection Directive.⁵¹ The Hague Programme instructed the Commission to bring forward proposals for a third pillar Data Protection Framework Decision (DPFD) at the same time as it put forward proposals for a Framework Decision on the Principle of Availability, since the two were intimately connected. This it did in October 2005. Data transferred under the second of these Framework Decisions would be governed by the DPFD.

⁴⁹ Regulation (EC) 1987/2006 of 20 December 2006, Article 50 (OJ L 381 of 28 December 2006).

⁵⁰ www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2007/07-04-04_crossborder_cooperation_EN.pdf

⁵¹ Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L281, 23 November 1995, p 31.

Importantly, the Commission's impact assessment accompanying the Framework Decision on the principle of availability highlighted that the risk for personal data involved in that proposal would be significantly diminished by the existence of the third pillar data protection regime which was then envisaged.⁵² As we have explained, negotiations on the Framework Decision on the principle of availability have already foundered; we are anxious that the same fate should not await the DPF.

84. In three of our recent reports we have commented on the number of EU initiatives for the exchange of information which have data protection provisions, the extent to which they differ, and the difficulty of determining how they interact.⁵³ In Chapter 6 of our recent report on the second generation Schengen Information System⁵⁴ we considered in some detail the problems caused by the differences between the provisions in the Schengen Decision and those in what was then the latest draft of the DPF.
85. Inevitably, the data protection provisions in Chapter 7 of the Prüm Treaty, and hence in Chapter 6 of the Prüm Decision, are yet again different from those in the latest formal draft of the DPF.⁵⁵ The protection is to be no less than that of the Council of Europe Convention 108; the purpose of the supply of information is to be respected; and the data subject has a right to know what information is held about him, and a right to damages for injury from inaccurate information. There are also provisions for the deletion of information which is inaccurate, or has become irrelevant, or which has reached the date of deletion under the law of the State which supplied the information.
86. There is nothing to say whether these provisions or those of a future DPF are to prevail in case of conflict. The Information Commissioner hopes and expects that "the DPF will provide the *lex generalis* and the Prüm Convention will provide the *lex specialis*. Thus the general provisions of the DPF will apply except where there are more specific provisions [e.g. in relation to logging and recording] in the Prüm Convention." (p 37) This is also the view of Baroness Ashton, the Parliamentary Under-Secretary of State at the Department for Constitutional Affairs who is responsible for data protection. (Q 39)
87. The EDPS believes that these provisions "offer in substance an appropriate protection", but points out that they are "intended to build on a general framework for data protection that ... has not been adopted". He believes (and has stated more than once in his earlier formal Opinions) that the Prüm Decision should build on a general framework of data protection in the third pillar, and should not be adopted before the adoption of a framework on data protection guaranteeing an appropriate level of data protection. But he points out that "in practice legislation facilitating exchange of data is adopted before an adequate level of data protection is guaranteed. This order should be reversed." (p 32) He repeats these views in his latest formal Opinion.⁵⁶

⁵² Document 13413/05 Add 1.

⁵³ *Behind Closed Doors: the meeting of the G6 interior ministers at Heiligendamm*: 40th Report, Session 2005–06, HL Paper 221, Chapter 3, to which we refer in paragraph 32 above; *After Heiligendamm: doors ajar at Stratford-upon-Avon*: 5th Report, Session 2006–07, HL Paper 32, paragraphs 22–28.

⁵⁴ Schengen Information System II (SIS II): 9th Report, Session 2006–07, HL Paper 49.

⁵⁵ Document 13246/2/06.

⁵⁶ Paragraphs 57–59 of the Opinion.

88. The German Presidency does not share these views. In the press notice reacting to the EDPS' Opinion, it stresses that "incorporating the Prüm Treaty into the EU's legal framework does not depend on first achieving agreement on the proposed data protection framework decision. On the contrary, both the Prüm Treaty and the draft Council Decision to replace the treaty already contain very carefully drafted data protection provisions". The EDPS had indeed said that he felt these provisions had been carefully drafted, but he saw them only as "specific provisions on top of a general framework for data protection".
89. Mr Faull helpfully reminded the Committee that "[T]he Justice and Home Affairs Council on 14 April 2005 considered how the principle of availability should be implemented and in doing that confirmed that an appropriate system of data protection needed to be put in place". The Commission too thought that "the right way to do that is to adopt the Framework Decision on data protection", and he hoped that "we will have, alongside the Prüm Treaty having become part of law of the European Union, a dedicated data protection system for the third pillar as well." (Q 108)
90. **We share the view that negotiations on the Data Protection Framework Decision, instead of being sidelined, should proceed in parallel with those on the Prüm Decision.**
91. **The Government should seize the opportunity to stipulate that they will agree to the Prüm Decision only if other Member States, led by the German Presidency, simultaneously agree to a Framework Decision setting high standards for the protection of data across the third pillar.**
92. **If the Presidency wishes other Member States to accept its own views on the exchange of information, it must be prepared to listen to views on how that information is to be safeguarded, and to act on those views.**
93. After months of stalemate in the negotiations on the Framework Decision, the German Presidency came forward in March with a new draft. We are by no means sure that it will prove satisfactory. The Assistant EDPS said that he had "spotted some positive things" about it, but was also worried that it was a text with more general principles than the Commission proposal. As in the case of the Prüm Decision itself, the EDPS has not been consulted on this draft because it is not a formal proposal. (QQ 138–140)
94. Mr Faull told us he was "confident" that adoption of the Framework Decision was possible under the German Presidency. (Q 108) This would certainly be a momentous achievement—provided of course that the Framework Decision offered adequate safeguards. However we believe it may be optimistic to expect negotiations on a draft DPF to be concluded in time for agreement by the JHA Council in June. Article 39(1) of the Treaty on European Union requires a minimum of three months for consultation of the European Parliament, and even if the Parliament agreed on a shorter time, the opportunity for scrutiny by national delegations and Parliaments and by the European and national data protection authorities would scarcely be adequate.
95. Negotiations leading to a satisfactory DPF which offers adequate safeguards may well therefore last beyond the end of the German Presidency. If, as we hope, they proceed in parallel with those on the Prüm Decision, it

follows that the adoption of both instruments may be delayed. Perhaps the Presidency is hoping that agreement on a statement of principles on third pillar data protection will suffice. **The Government should strongly resist any such suggestion.**

96. Baroness Ashton has told this Committee more than once that the United Kingdom has high data protection standards which apply to information processed in the law enforcement field. We accept that this country's legislation is stricter than most. But once the principle of availability is fully implemented, Member States will lose the power to control the flow of information to other States, and so lose the power to impose their own standards. The relevant standard becomes that of the Member State with the weakest legislation, offering the least protection.
97. **The Government should try to ensure that United Kingdom data protection standards are replicated across the EU. The only way to achieve this is to adopt for all third pillar measures a Framework Decision which will guarantee those standards for the protection of personal data in all Member States.**
98. **We believe that, given the need for unanimity, the negotiations on the Prüm Decision provide an unrivalled opportunity for adopting a data protection regime at the same time as the legislation facilitating data exchange is adopted.**

CHAPTER 5: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

99. We put on record our regret that the German Presidency should have been unwilling to discuss with the Committee of a national Parliament an initiative to which we, like them, attach great importance. (paragraph 4)
100. We believe that for seven Member States to enter into an agreement including first pillar matters falling squarely within EC competence may have breached the letter, and certainly breached the spirit, of Article 10 of the EC Treaty. (paragraph 22)
101. In the space of a year four ministers told us that the question of accession to Prüm was under “close”, “active” and “serious” consideration. We do not understand why it should have taken so long for the Government to conclude that there was at least one provision of the Treaty to which the United Kingdom could not agree. (paragraph 28)
102. The threshold for holding DNA profiles on the United Kingdom DNA database is far lower than in any other Member State, and the proportion of the population on the database correspondingly far higher. The Government should as a matter of urgency examine the implications of DNA exchanges for those on the United Kingdom database. (paragraph 42)
103. Law enforcement authorities in all the Member States must be provided with the same clear guidance and training which will enable them to operate the new laws responsibly in the fight against crime. (paragraph 53)
104. It is understandable that a State which holds the Presidency should wish to make use of that opportunity to further legislative proposals which it is particularly anxious to see implemented. This should not however be seen as a reason for cutting short full consideration by all the Member States. The timetable for initiatives by Member States should be the same as for Commission proposals. (paragraph 57)
105. We congratulate the Government on having successfully insisted on the removal from the Prüm Decision of a general provision which would allow designated officers and officials of one Member State to enter the territory of another Member State without prior permission. (paragraph 65)
106. Since unanimity is needed for the adoption of the Prüm Decision this shows that, given the will, the Government should be able to secure agreement on other matters which need to be settled before the Decision can be adopted. (paragraph 66)
107. If and when the Prüm Decision is agreed, any matters in the Framework Decision on the principle of availability which have not been adequately dealt with must continue to be the subject of negotiation. (paragraph 71)
108. There should be a convention that any legislative proposals by Member States should, like Commission proposals, be accompanied by full explanatory memoranda and regulatory impact assessments. (paragraph 73)
109. Member States which are asked to consider an initiative by some of their number should normally decline to do so unless and until they have been supplied with a full explanatory memorandum covering in particular the estimated cost of the initiative. (paragraph 74)

110. The Government should not allow the Prüm Decision to be incorporated into EU law unless and until there is available a reliable estimate of the start-up cost and the running costs of doing so, and then only if they believe that the benefits to the United Kingdom of implementing the Decision justify these costs. (paragraph 78)
111. The Government should insist on the inclusion in the Prüm Decision of provisions to ensure that its operation is properly monitored. What is required is at the very least:
 - an obligation on national agencies to produce annual reports, including statistics, on the use of their powers under the Decision; and
 - an obligation on the Commission to produce an overall evaluation of the operation of the Decision, for submission to the Council, the European Parliament and national parliaments, to see whether it needs amendment. (paragraph 80)
112. There should be a requirement that Member States putting forward initiatives with data protection implications should consult the European Data Protection Supervisor. (paragraph 81)
113. We share the view of the Commission that negotiations on the Data Protection Framework Decision, instead of being sidelined, should proceed in parallel with those on the Prüm Decision. (paragraph 90)
114. The Government should seize the opportunity to stipulate that they will agree to the Prüm Decision only if other Member States, led by the German Presidency, simultaneously agree to a Framework Decision setting high standards for the protection of data across the third pillar. (paragraph 91)
115. If the Presidency wishes other Member States to accept its own views on the exchange of information, it must be prepared to listen to views on how that information is to be safeguarded, and to act on those views. (paragraph 92)
116. The Government should strongly resist any suggestion that agreement on a statement of general principles on data protection would be an adequate *quid pro quo* for the adoption of the Prüm Decision. (paragraph 95)
117. The Government should try to ensure that United Kingdom data protection standards are replicated across the EU. The only way to achieve this is to adopt for all third pillar measures a Framework Decision which will guarantee those standards for the protection of personal data in all Member States. (paragraph 97)
118. We believe that, given the need for unanimity, the negotiations on the Prüm Decision provide an unrivalled opportunity for adopting a data protection regime at the same time as the legislation facilitating data exchange is adopted. (paragraph 98)
119. We recommend this report to the House for debate. (paragraph 5)

APPENDIX 1: SUB-COMMITTEE F (HOME AFFAIRS)

The members of the Sub-Committee which conducted this inquiry were:

Baroness Bonham-Carter of Yarnbury
Earl of Caithness
Baroness D'Souza
Lord Foulkes of Cumnock
Lord Harrison
Baroness Henig
Lord Jopling
Earl of Listowel
Lord Marlesford
Lord Teverson
Lord Wright of Richmond (Chairman)

Declarations of Interests:

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

Interests declared by Members relevant to this inquiry

Baroness Henig
Chair of the Security Industry Authority
President of the Association of Police Authorities

Lord Wright of Richmond
Former Chairman, Joint Intelligence Committee

APPENDIX 2: LIST OF WITNESSES

The following witnesses gave evidence. Those marked * gave oral evidence.

- * Centre for European Policy Studies (CEPS)
- * Department for Constitutional Affairs (DCA)
- * European Commission, Directorate-General Justice, Freedom & Security (D-G JLS)
- * European Data Protection Supervisor
- * Home Office
Office of the Information Commissioner
- * Statewatch

APPENDIX 3: THE PRÜM DECISION: DOC. 7273/07

DRAFT COUNCIL DECISION

**on the stepping up of cross-border cooperation,
particularly in combating terrorism and cross-border crime**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1)(a) and (b), Article 31(1)(a), Article 32 and Article 34(2)(c) thereof,

On the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Slovenia, the Slovak Republic, the Italian Republic, the Republic of Finland, the Portuguese Republic, Romania and the Kingdom of Sweden,

Having regard to the Opinion of the European Parliament,

Whereas:

- (x) Following the entry into force of the Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration (Prüm Treaty), this initiative is submitted, in consultation with the European Commission, in compliance with the provisions of the Treaty on European Union, with the aim of incorporating the substance of the provisions of the Prüm Treaty into the legal framework of the European Union.
- (1) (deleted)
- (2) (deleted)
- (3) The conclusions of the European Council meeting in Tampere in October 1999 confirmed the need for improved exchange of information between the competent authorities of the Member States for the purpose of detecting and investigating offences.
- (4) In the Hague Programme for strengthening freedom, security and justice in the European Union of November 2004, the European Council set forth its conviction that for that purpose an innovative approach to the cross-border exchange of law enforcement information was needed.
- (5) The European Council accordingly stated that the exchange of such information should comply with the conditions applying to the principle of availability. This means that a law enforcement officer in one Member State of the Union who needs information in order to carry out his duties can obtain it from another Member State and that the law enforcement authorities in the Member State that holds this information will make it available for the declared purpose, taking account of the needs of investigations pending in that Member State.
- (6) The European Council set 1 January 2008 as the deadline for achieving this objective in the Hague Programme.

- (7) The Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union⁵⁷ already lays down rules whereby the Member States' law enforcement authorities may exchange existing information and intelligence expeditiously and effectively for the purpose of carrying out criminal investigations or criminal intelligence operations.
- (8) The Hague Programme for strengthening freedom, security and justice states also that full use should be made of new technology and that there should also be reciprocal access to national databases, while stipulating that new centralised European databases should be created only on the basis of studies that have shown their added value.
- (9) For effective international cooperation it is of fundamental importance that precise information can be exchanged swiftly and efficiently. The aim is to introduce procedures for promoting fast, efficient and inexpensive means of data exchange. For the joint use of data these procedures should be subject to accountability and incorporate appropriate guarantees as to the accuracy and security of the data during transmission and storage as well as procedures for recording data exchange and restrictions on the use of information exchanged.
- (10) These requirements are satisfied by the Prüm Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration. In order to meet the substantive requirements of the Hague Programme for all Member States within the time-scale set by it, the substance of the essential parts of the Prüm Treaty should become applicable to all Member States. (...)
- (11) This Decision therefore contains provisions based on the main provisions of the Prüm Treaty and designed to improve the exchange of information, whereby Member States grant one another access rights to their automated DNA analysis files, automated dactyloscopic identification systems and vehicle registration data. In the case of data from national DNA analysis files and automated dactyloscopic identification systems, a hit/no hit system should enable the searching Member State, in a second step, to request specific related personal data from the Member State administering the file and, where necessary, to request further information through mutual assistance procedures, including those adopted pursuant to the Framework-Decision 2006/960/JHA, referred to in recital (7).
- (12) This would considerably speed up existing procedures enabling Member States to find out whether any other Member State, and if so, which, has the information it needs.
- (13) Cross-border data comparison should open up a new dimension in crime fighting. The information obtained by comparing data should open up new investigative approaches for Member States and thus play a crucial role in assisting Member States' law enforcement and judicial authorities.

⁵⁷ OJ L 386, 29.12.2006, p. 89.

- (14) The rules should be based on networking Member States' national databases and not the creation of new, common, data bases.
- (15) Subject to certain conditions, Member States should be able to supply personal and non-personal data in order to improve the exchange of information with a view to preventing criminal offences and maintaining public order and security in connection with major events with a cross-border dimension.
- (16) In addition to improving the exchange of information, there is a need to regulate other forms of closer cooperation between police authorities, in particular by means of joint security operations (e.g. joint patrols).
- (17) Closer police and judicial cooperation in criminal matters must go hand in hand with respect for fundamental rights, in particular the right to respect for privacy and to protection of personal data, to be guaranteed by special data protection arrangements, which should be tailored to the specific nature of different forms of data exchange. Such data protection provisions should take particular account of the specific nature of cross-border on-line access to databases. Since, with on-line access, it is not possible for the Member State administering the file to make any prior checks, a system ensuring post hoc monitoring should be in place.
- (18) The architectonics of comparing anonymous profiles, where personal data is exchanged only after a hit, the hit/no hit system guarantees an adequate system of data protection, it being understood that the supply of personal data to another Member State requires an adequate level of data protection on the part of the receiving Member States.
- (19) Since the objectives of this Decision, in particular the improvement of information exchange in the European Union, cannot be sufficiently achieved by the Member States in isolation owing to the cross-border nature of crime fighting and security issues, and the Member States are forced to rely on one another in these matters, and can therefore be better achieved at European Union level, the Council may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the EC Treaty, to which Article 2 of the EU Treaty refers. In accordance with the principle of proportionality pursuant to Article 5 of the EC Treaty, this Decision does not go beyond what is necessary to achieve those objectives.
- (20) This Decision respects the fundamental rights and observes the principles set out in particular in the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

CHAPTER 1

General aspects

Article 1

Aim and scope

By means of this Decision, the Member States intend to step up cross-border cooperation in matters covered by Title VI of the EU Treaty, particularly the exchange of information between authorities responsible for the prevention and

investigation of criminal offences. To this end, this Decision contains rules in the following areas:

- (a) Provisions on the conditions and procedure for the automated transfer of DNA profiles, dactyloscopic data and certain national vehicle registration data (Chapter 2);
- (b) Provisions on the conditions for the supply of data in connection with major events with a cross-border dimension (Chapter 3);
- (c) Provisions on the conditions for the supply of information in order to prevent terrorist offences (Chapter 4);
- (d) Provisions on the conditions and procedure for stepping up cross-border police cooperation through various measures (Chapter 5).

CHAPTER 2

On-line access and follow-up requests

Section 1

DNA profiles

Article 2

Establishment of national DNA analysis files

1. Member States shall open and keep national DNA analysis files for the investigation of criminal offences. Processing of data kept in those files, under this Decision, shall be carried out in accordance with this Decision, in compliance with the national law applicable to the processing.
2. For the purpose of implementing this Decision, the Member States shall ensure the availability of reference data from their national DNA analysis files as referred to in the first sentence of paragraph 1. Reference data shall only include DNA profiles established from the non-coding part of DNA and a reference number. Reference data shall not contain any data from which the data subject can be directly identified. Reference data which is not attributed to any individual (“unidentified DNA-profiles”) shall be recognisable as such.
3. Each Member State shall inform the General Secretariat of the Council of the national DNA analysis files to which Articles 2 to 6 apply and the conditions for automated searching as referred to in Article 3(1) in accordance with Article 37.

Article 3

Automated searching of DNA profiles

1. For the investigation of criminal offences, Member States shall allow other Member States’ national contact points as referred to in Article 6, access to the reference data in their DNA analysis files, with the power to conduct automated searches by comparing DNA profiles. Searches may be conducted only in individual cases and in compliance with the requesting Member State’s national law.

2. Should an automated search show that a DNA profile supplied matches DNA profiles entered in the receiving Member State's searched file, the national contact point of the receiving Member State shall receive in an automated way the reference data with which a match has been found. If no match can be found, automated notification of this shall be given.

Article 4

Automated comparison of DNA profiles

1. For the investigation of criminal offences, the Member States shall, by mutual consent, via their national contact points, compare the DNA profiles of their unidentified DNA-profiles with all DNA profiles from other national DNA analysis files' reference data. Profiles shall be supplied and compared in automated form. Unidentified DNA profiles shall be supplied for comparison only where provided for under the requesting Member State's national law.
2. Should a Member State, as a result of the comparison referred to in paragraph 1, find that any DNA profiles supplied match any of those in its DNA analysis files, it shall, without delay, supply the other Member State's national contact point with the reference data with which a match has been found.

Article 5

Supply of further personal data and other information

Should the procedures referred to in Articles 3 and 4 show a match between DNA profiles, the supply of further available personal data and other information relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Member State.

Article 6

National contact point and implementing measures

1. For the purposes of the supply of data as referred to in Articles 3 and 4, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable national law.
2. Details of technical arrangements for the procedures set out in Articles 3 and 4 shall be laid down in the implementing measures as referred to in Article 34.

Article 7

Collection of cellular material and supply of DNA profiles

Where, in ongoing investigations or criminal proceedings, there is no DNA profile available for a particular individual present within a requested Member State's territory, the requested Member State shall provide legal assistance by collecting and examining cellular material from that individual and by supplying the DNA profile obtained, if:

- (a) the requesting Member State specifies the purpose for which this is required;
- (b) the requesting Member State produces an investigation warrant or statement issued by the competent authority, as required under that

Member State's law, showing that the requirements for collecting and examining cellular material would be fulfilled if the individual concerned were present within the requesting Member State's territory; and

- (c) under the requested Member State's law, the requirements for collecting and examining cellular material and for supplying the DNA profile obtained are fulfilled.

Section 2

Dactyloscopic Data

Article 8

Dactyloscopic data

For the purpose of implementing this Decision, Member States shall ensure the availability of reference data from the file for the national automated fingerprint identification systems established for the prevention and investigation of criminal offences. Reference data shall only include dactyloscopic data and a reference number. Reference data shall not contain any data from which the data subject can be directly identified. Reference data which is not attributed to any individual ("unidentified dactyloscopic data") must be recognisable as such.

Article 9

Automated searching of dactyloscopic data

1. For the prevention and investigation of criminal offences, Member States shall allow other Member States' national contact points, as referred to in Article 11, access to the reference data in the automated fingerprint identification systems which they have established for that purpose, with the power to conduct automated searches by comparing dactyloscopic data. Searches may be conducted only in individual cases and in compliance with the requesting Member State's national law.
2. The confirmation of a match of dactyloscopic data with reference data held by the Member State administering the file shall be carried out by the national contact point of the requesting Member State by means of the automated supply of the reference data required for a clear match.

Article 10

Supply of further personal data and other information

Should the procedure referred to in Article 9 show a match between dactyloscopic data, the supply of further available personal data and other information relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested Member State.

Article 11

National contact point and implementing measures

1. For the purposes of the supply of data as referred to in Article 9, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable national law.

2. Details of technical arrangements for the procedure set out in Article 9 shall be laid down in the implementing measures as referred to in Article 34.

Section 3

Vehicle registration data

Article 12

Automated searching of vehicle registration data

1. For the prevention and investigation of criminal offences and in dealing with other offences coming within the jurisdiction of the courts or the public prosecution service in the searching Member State, as well as in maintaining public security, Member States shall allow other Member States' national contact points, as referred to in paragraph 2, access to the following national vehicle registration data, with the power to conduct automated searches in individual cases:

- (a) data relating to owners or operators; and
- (b) data relating to vehicles.

Searches may be conducted only with a full chassis number or a full registration number. Searches may be conducted only in compliance with the searching Member State's national law.

2. For the purposes of the supply of data as referred to in paragraph 1, each Member State shall designate a national contact point for incoming requests. The powers of the national contact points shall be governed by the applicable national law. Details of technical arrangements for the procedure shall be laid down in the implementing measures as referred to in Article 34.

CHAPTER 3

Major Events

Article 13

Supply of non-personal data

For the prevention of criminal offences and in maintaining public order and security for major events with a cross-border dimension, in particular for sporting events or European Council meetings, Member States shall, both upon request and of their own accord, in compliance with the supplying Member State's national law, supply one another with any non-personal data required for those purposes.

Article 14

Supply of personal data

1. For the prevention of criminal offences and in maintaining public order and security for major events with a cross-border dimension, in particular for sporting events or European Council meetings, Member States shall, both upon request and of their own accord, supply one another with personal data if any final convictions or other circumstances give reason to believe

that the data subjects will commit criminal offences at the event or pose a threat to public order and security, in so far as the supply of such data is permitted under the supplying Member State's national law.

2. Personal data may be processed only for the purposes laid down in paragraph 1 and for the specified event for which they were supplied. The data supplied must be deleted without delay once the purposes referred to in paragraph 1 have been achieved or can no longer be achieved. The data supplied must in any event be deleted after not more than a year.

Article 15

National contact point

For the purposes of the supply of data as referred to in Articles 13 and 14, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable national law.

CHAPTER 4

Measures to Prevent Terrorist Offences

Article 16

Supply of information in order to prevent terrorist offences

1. For the prevention of terrorist offences, Member States may, in compliance with national law, in individual cases, even without being requested to do so, supply other Member States' national contact points, as referred to in paragraph 3, with the personal data and information specified in paragraph 2, in so far as is necessary because particular circumstances give reason to believe that the data subjects will commit criminal offences as referred to in Articles 1 to 3 of EU Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism⁵⁸.
2. The data to be supplied shall comprise surname, first names, date and place of birth and a description of the circumstances giving rise to the belief referred to in paragraph 1.
3. Each Member State shall designate a national contact point for exchange of information with other Member States' national contact points. The powers of the national contact points shall be governed by the applicable national law.
4. The supplying Member State may, in compliance with national law, impose conditions on the use made of such data and information by the receiving Member State. The receiving Member State shall be bound by any such conditions.

⁵⁸ OJ L 164, 22.6.2002, p. 3.

CHAPTER 5

Other forms of Cooperation

Article 17

Joint operations

1. In order to step up police cooperation, the competent authorities designated by the Member States may, in maintaining public order and security and preventing criminal offences, introduce joint patrols and other joint operations in which designated officers or other officials (“officers”) from other Member States participate in operations within a Member State’s territory.
2. Each Member State may, as a host Member State, in compliance with its own national law, and with the seconding Member State’s consent, confer executive powers on the seconding Member States’ officers involved in joint operations or, in so far as the host Member State’s law permits, allow the seconding Member States’ officers to exercise their executive powers in accordance with the seconding Member State’s law. Such executive powers may be exercised only under the guidance and, as a rule, in the presence of officers from the host Member State. The seconding Member States’ officers shall be subject to the host Member State’s national law. The host Member State shall assume responsibility for their actions.
3. Seconding Member States’ officers involved in joint operations shall be subject to the instructions given by the host Member State’s competent authority.
4. Member States shall submit declarations as referred to in Article 37 in which they lay down the practical aspects of cooperation.

Article 18

Assistance in connection with mass gatherings disasters and serious accidents

Member States’ competent authorities shall provide one another with mutual assistance, in compliance with national law, in connection with mass gatherings, disasters and similar major events, and serious accidents, by seeking to prevent criminal offences and maintain public order and security by:

- (a) notifying one another as promptly as possible of such situations with a cross-border impact and exchanging any relevant information;
- (b) taking and coordinating the necessary policing measures within their territory in situations with a cross-border impact;
- (c) as far as possible, dispatching officers, specialists and advisers and supplying equipment, at the request of the Member State within whose territory the situation has arisen.

Article 19

Use of arms, ammunition and equipment

1. Officers from a seconding Member State who are involved in a joint operation within another Member State’s territory pursuant to Article 17 or

18 may wear their own national uniforms there. They may carry such arms, ammunition and equipment as they are allowed to under the seconding Member State's national law. The host Member State may prohibit the carrying of particular arms, ammunition or equipment by a seconding Member State's officers.

2. Member States shall submit declarations as referred to in Article 37 in which they list the arms, ammunition and equipment that may be used only in legitimate self-defence or in the defence of others. The host Member State's officer in actual charge of the operation may in individual cases, in compliance with national law, give permission for arms, ammunition and equipment to be used for purposes going beyond those specified in the first sentence. The use of arms, ammunition and equipment shall be governed by the host Member State's law. The competent authorities shall inform one another of the arms, ammunition and equipment permitted and of the conditions for their use.
3. If officers from a Member State make use of vehicles in action under this Decision within another Member State's territory, they shall be subject to the same road traffic regulations as the host Member State's officers, including as regards right of way and any special privileges.
4. Member States shall submit declarations as referred to in Article 37 in which they lay down the practical aspects of the use of arms, ammunition and equipment.

Article 20

Protection and assistance

Member States shall be required to provide other Member States' officers crossing borders with the same protection and assistance in the course of those officers' duties as for their own officers.

Article 21

General rules on civil liability

1. Where officials of a Member State are operating in another Member State, their Member State shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.
4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain, in the case provided for in paragraph 1, from requesting reimbursement of damages it has sustained from another Member State.

Article 22

Criminal liability

Officers operating within another Member State's territory under this Decision, shall be treated in the same way as officers of the host Member State with regard to any criminal offences that might be committed by, or against them, save as otherwise provided in another agreement which is binding on the Member States concerned.

Article 23

Employment relationship

Officers operating within another Member State's territory, under this Decision, shall remain subject to the employment law provisions applicable in their own Member State, particularly as regards disciplinary rules.

CHAPTER 6

General provisions on data protection

Article 24

Definitions and scope

1. For the purposes of this Decision:
 - (a) "processing of personal data" shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, sorting, retrieval, consultation, use, disclosure by supply, dissemination or otherwise making available, alignment, combination, blocking, erasure or destruction of data. Processing within the meaning of this Decision shall also include notification of whether or not a hit exists;
 - (b) "automated search procedure" shall mean direct access to the automated files of another body where the response to the search procedure is fully automated;
 - (c) "referencing" shall mean the marking of stored personal data without the aim of limiting their processing in future;
 - (d) "blocking" shall mean the marking of stored personal data with the aim of limiting their processing in future.
3. The following provisions shall apply to data which are or have been supplied pursuant to this Decision, save as otherwise provided in the preceding Chapters.

Article 25

Level of data protection

1. As regards the processing of personal data which are or have been supplied pursuant to this Decision, each Member State shall guarantee a level of protection of personal data in its national law at least equal to that resulting from the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981

and its Additional Protocol of 8 November 2001 and in doing so, shall take account of Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe to the Member States regulating the use of personal data in the police sector, also where data are not processed automatically.

2. The supply of personal data provided for under this Decision may not take place until the provisions of this Chapter have been implemented in the national law of the territories of the Member States involved in such supply. The Council shall unanimously decide whether this condition has been met.
3. Paragraph 2 shall not apply to those Member States where the supply of personal data as provided for in this Decision has already started pursuant to the Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, in particular in combating terrorism, cross-border crime and illegal migration (“Prüm Treaty”).

Article 26

Purpose

1. Processing of personal data by the receiving Member State shall be permitted solely for the purposes for which the data have been supplied in accordance with this Decision. Processing for other purposes shall be permitted solely with the prior authorisation of the Member State administering the file and subject only to the national law of the receiving Member State. Such authorisation may be granted provided that processing for such other purposes is permitted under the national law of the Member State administering the file.
2. Processing of data supplied pursuant to Articles 3, 4 and 9 by the searching or comparing Member State shall be permitted solely in order to:
 - (a) establish whether the compared DNA profiles or dactyloscopic data match;
 - (b) prepare and submit a police or judicial request for legal assistance in compliance with national law if those data match;
 - (c) record within the meaning of Article 30.

The Member State administering the file may process the data supplied to it in accordance with Articles 3, 4 and 9 solely where this is necessary for the purposes of comparison, providing automated replies to searches or recording pursuant to Article 30. The supplied data shall be deleted immediately following data comparison or automated replies to searches unless further processing is necessary for the purposes mentioned under points (b) and (c) of the first subparagraph.

3. Data supplied in accordance with Article 12 may be used by the Member State administering the file solely where this is necessary for the purpose of providing automated replies to search procedures or recording as specified in Article 30. The data supplied shall be deleted immediately following automated replies to searches unless further processing is necessary for recording pursuant to Article 30. The searching Member State may use

data received in a reply solely for the procedure for which the search was made.

Article 27

Competent authorities

Personal data supplied may be processed only by the authorities, bodies and courts with responsibility for a task in furtherance of the aims mentioned in Article 26. In particular, data may be supplied to other entities only with the prior authorisation of the supplying Member State and in compliance with the law of the receiving Member State.

Article 28

Accuracy, current relevance and storage time of data

1. The Member States shall ensure the accuracy and current relevance of personal data. Should it transpire *ex officio* or from a notification by the data subject, that incorrect data or data which should not have been supplied have been supplied, this shall be notified without delay to the receiving Member State or Member States. The Member State or Member States concerned shall be obliged to correct or delete the data. Moreover, personal data supplied shall be corrected if they are found to be incorrect. If the receiving body has reason to believe that the supplied data are incorrect or should be deleted the supplying body shall be informed forthwith.
2. Data, the accuracy of which the data subject contests and the accuracy or inaccuracy of which cannot be established shall, in accordance with the national law of the Member States, be marked with a flag at the request of the data subject. If a flag exists, this may be removed subject to the national law of the Member States and only with the permission of the data subject or based on a decision of the competent court or independent data protection authority.
3. Personal data supplied which should not have been supplied or received shall be deleted. Data which are lawfully supplied and received shall be deleted:
 - (a) if they are not or no longer necessary for the purpose for which they were supplied; if personal data have been supplied without request, the receiving body shall immediately check if they are necessary for the purposes for which they were supplied;
 - (b) following the expiry of the maximum period for keeping data laid down in the national law of the supplying Member State where the supplying body informed the receiving body of that maximum period at the time of supplying the data.

Where there is reason to believe that deletion would prejudice the interests of the data subject, the data shall be blocked instead of being deleted in compliance with national law. Blocked data may be supplied or used solely for the purpose which prevented their deletion.

Article 29

Technical and organisational measures to ensure data protection and data security

1. The supplying and receiving bodies shall take steps to ensure that personal data is effectively protected against accidental or unauthorised destruction, accidental loss, unauthorised access, unauthorised or accidental alteration and unauthorised disclosure.
2. The (...) features of the technical specification of the automated search procedure are regulated in the implementing measures as referred to in Article 34 which guarantee that:
 - (a) state-of-the-art technical measures are taken to ensure data protection and data security, in particular data confidentiality and integrity;
 - (b) encryption and authorisation procedures recognised by the competent authorities are used when having recourse to generally accessible networks; and
 - (c) the admissibility of searches in accordance with Article 30(2), (4) and (5) can be checked.

Article 30

Logging and recording; special rules governing automated and non-automated supply

1. Each Member State shall guarantee that every non-automated supply and every non-automated receipt of personal data by the body administering the file and by the searching body is logged in order to verify the admissibility of the supply. Logging shall contain the following information:
 - (a) the reason for the supply;
 - (b) the data supplied;
 - (c) the date of the supply; and
 - (d) the name or reference code of the searching body and of the body administering the file.
2. The following shall apply to automated searches for data based on Articles 3, 9 and 12 and to automated comparison pursuant to Article 4:
 - (a) Only specially authorised officers of the national contact points may carry out automated searches or comparisons. The list of officers authorised to carry out automated searches or comparisons, shall be made available upon request to the supervisory authorities referred to in paragraph 5 and to the other Member States.
 - (b) Each Member State shall ensure that each supply and receipt of personal data by the body administering the file and the searching body is recorded, including notification of whether or not a hit exists. Recording shall include the following information:
 - (i) the data supplied;
 - (ii) the date and exact time of the supply; and

- (iii) the name or reference code of the searching body and of the body administering the file.

The searching body shall also record the reason for the search or supply as well as an identifier for the official who carried out the search and the official who ordered the search or supply.

3. The recording body shall immediately communicate the recorded data upon request to the competent data protection authorities of the relevant Member State at the latest within four weeks following receipt of the request. Recorded data may be used solely for the following purposes:
 - (a) monitoring data protection;
 - (b) ensuring data security.
4. The recorded data shall be protected with suitable measures against inappropriate use and other forms of improper use and shall be kept for two years. After the conservation period the recorded data shall be deleted immediately.
5. Responsibility for legal checks on the supply or receipt of personal data lies with the independent data protection authorities of the respective Member States. Anyone can request these authorities to check the lawfulness of the processing of data in respect of their person in compliance with national law. Independently of such requests, these authorities and the bodies responsible for recording shall carry out random checks on the lawfulness of supply, based on the files involved.

The results of such checks shall be kept for inspection for 18 months by the independent data protection authorities. After this period, they shall be immediately deleted. Each data protection authority may be requested by the independent data protection authority of another Member State to exercise its powers in accordance with national law. The independent data protection authorities of the Member States shall perform the inspection tasks necessary for mutual cooperation, in particular by exchanging relevant information.

Article 31

Data subjects' rights to information and damages

1. At the request of the data subject under national law, information shall be supplied in compliance with national law to the data subject upon production of proof of his identity, without unreasonable expense, in general comprehensible terms and without unacceptable delays, on the data processed in respect of his person, the origin of the data, the recipient or groups of recipients, the intended purpose of the processing and the legal basis for the processing. Moreover, the data subject shall be entitled to have inaccurate data corrected and unlawfully processed data deleted. The Member States shall also ensure that, in the event of violation of his rights in relation to data protection, the data subject shall be able to lodge an effective complaint to an independent court or a tribunal within the meaning of Article 6(1) of the European Convention on Human Rights or an independent supervisory authority within the meaning of Article 28 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing

of personal data and on the free movement of such data⁵⁹ and that he is given the possibility to claim for damages or to seek another form of legal compensation. The detailed rules for the procedure to assert these rights and the reasons for limiting the right of access shall be governed by the relevant national legal provisions of the Member State where the data subject asserts his rights.

2. Where a body of one Member State has supplied personal data under this Decision, the receiving body of the other Member State cannot use the inaccuracy of the data supplied as grounds to evade its liability vis-à-vis the injured party under national law. If damages are awarded against the receiving body because of its use of inaccurate transfer data, the body which supplied the data shall refund the amount paid in damages to the receiving body in full.

Article 32

Information requested by the Member States

The receiving Member State shall inform the supplying Member State on request of the processing of supplied data and the result obtained.

CHAPTER 7

Implementing and Final Provisions

Article 33

Declarations

(included in Article 37)

Article 34

Implementing measures

The Council shall adopt measures necessary to implement this Decision at the level of the Union in accordance with the procedure laid down in the second sentence of Article 34(2)(c) of the EU Treaty.

Article 35

Costs

Each Member State shall bear the operational costs incurred by its own authorities in connection with the application of this Decision. In special cases, the Member States concerned may agree on different arrangements.

Article 36

Relationship with other instruments

1. For the Member States concerned, the relevant provisions of this Decision shall be applied instead of the corresponding provisions contained in the

⁵⁹ OJ L 281, 23.11.1995, p. 31. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

Prüm Treaty. Any other provision of the Prüm Treaty shall remain applicable between the contracting parties of the Prüm Treaty.

2. Without prejudice to their commitments under other acts adopted pursuant to Title VI of the Treaty:
 - (a) Member States may continue to apply bilateral or multilateral agreements or arrangements on cross-border co-operation which (...) are in force on the date this Decision is adopted in so far as such agreements or arrangements are not incompatible with the objectives of this Decision. (...)
 - (b) Member States may conclude or bring into force bilateral or multilateral agreements or arrangements on cross-border co-operation after this Decision has entered into force in so far as such agreements or arrangements provide for the objectives of this Decision to be extended or enlarged.
3. The agreements and arrangements referred to in paragraphs 1 and 2 may not affect relations with Member States which are not parties thereto.
4. Within [... days/weeks] of this Decision taking effect Member States shall inform the Council and the Commission of existing agreements or arrangements within the meaning of paragraph 2(a) which they wish to continue to apply.
5. Member States shall also inform the Council and the Commission of all new agreements or arrangements within the meaning of paragraph 2(b) within 3 months of their signing or, in the case of instruments which were signed before adoption of this Decision, within three months of their entry into force.
6. Nothing in this Decision shall affect bilateral or multilateral agreements or arrangements between Member States and third States.
7. This Decision shall be without prejudice to existing agreements on legal assistance or mutual recognition of court decisions.

Article 37

Implementation and declarations

1. Member States shall take the necessary measures to comply with the provisions of this Decision within [... years] of this Decision taking effect.
2. Member States shall inform the General Secretariat of the Council and the Commission that they have implemented the obligations imposed on them under this Decision and submit the declarations foreseen by this Decision. When doing so, each Member State may indicate that it will apply immediately this Decision in its relations with those Member States which have given the same notification.
3. Declarations submitted in accordance with paragraph 2 may be amended at any time by means of a declaration submitted to the General Secretariat of the Council. The General Secretariat of the Council shall forward any declarations received to the Member States and the Commission.
4. On the basis of this and other information made available by Member States on request, the Commission shall submit a report to the Council by [at the latest after three years after taking effect] on the implementation of

this Decision accompanied by such proposals as it deems appropriate for any further development.

Article 38

Application

This Decision shall take effect [... days] following its publication in the Official Journal of the European Union.

APPENDIX 4: CHAPTERS 3 & 4 OF PRÜM TREATY

CHAPTER 3

Measures to prevent terrorist offences

Article 16

Supply of information in order to prevent terrorist offences

1. For the prevention of terrorist offences, the Contracting Parties may, in compliance with national law, in individual cases, even without being requested to do so, supply other Contracting Parties' national contact points, as referred to in paragraph 3, with the personal data and information specified in paragraph 2, in so far as is necessary because particular circumstances give reason to believe that the data subjects will commit criminal offences as referred to in Articles 1 to 3 of EU Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.
2. The data to be supplied shall comprise surname, first names, date and place of birth and a description of the circumstances giving reason for the belief referred to in paragraph 1.
3. Each Contracting Party shall designate a national contact point for exchange of information with other Contracting Parties' contact points. The powers of the national contact point shall be governed by the national law applicable.
4. The supplying authority may, in compliance with national law, impose conditions on the use made of such data and information by the receiving authority. The receiving authority shall be bound by any such conditions.

Article 17

Air marshals

1. Each Contracting Party shall decide for itself, under its national aviation security policy, whether to deploy air marshals on aircraft registered in that Contracting Party. Any such air marshals shall be deployed in accordance with the Chicago Convention of 7 December 1944 on International Civil Aviation and its annexes, in particular Annex 17, and with documents implementing it, with due regard for the aircraft commander's powers under the Tokyo Convention of 14 September 1963 on Offences and Certain Other Acts Committed on Board Aircraft, and in accordance with any other applicable international legal provisions in so far as they are binding upon the Contracting Parties concerned.
2. Air marshals as referred to in this Convention shall be police officers or other suitably trained officials responsible for maintaining security on board aircraft.
3. The Contracting Parties shall assist one another in the training and further training of air marshals and shall cooperate closely on matters concerning air marshals' equipment.
4. Before a Contracting Party deploys air marshals, its relevant national contact point must give notice in writing of their deployment. Notice shall

be given to the relevant national contact point in another Contracting Party at least three days before the flight in question to or from one of its airports. In the event of imminent danger, notice must be given without any further delay, as a rule before the aircraft lands.

5. The notice in writing shall contain the information specified in Annex 1 to this Convention and shall be treated as confidential by Contracting Parties. The Contracting Parties may amend Annex 1 by means of a separate agreement.

Article 18

Carrying of arms, ammunition and equipment

1. The Contracting Parties shall, upon request, grant air marshals deployed by other Contracting Parties general permission to carry arms, ammunition and equipment on flights to or from airports in Contracting Parties. Such permission shall cover the carrying of arms and ammunition on board aircraft and, subject to paragraph 2, in restricted-access security areas at an airport in the Contracting Party in question.
2. The carrying of arms and ammunition shall be subject to the following conditions:
 - (1) those carrying arms and ammunition may not disembark with them from aircraft at airports or enter restricted-access security areas at an airport in another Contracting Party, unless escorted by a representative of its competent national authority;
 - (2) the arms and ammunition carried must, immediately upon disembarking from the aircraft, under escort, be deposited for supervised safekeeping in a place designated by the competent national authority.

Article 19

National contact and coordination points

For the purposes of duties under Articles 17 and 18, each Contracting Party shall designate a national contact and coordination point.

CHAPTER 4

Measures to combat illegal migration

Article 20

Document advisers

1. On the basis of joint situation assessments and in compliance with the relevant provisions of EU Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network, the Contracting Parties shall agree on the seconding of document advisers to States regarded as source or transit countries for illegal migration.
2. Under their own national law, the Contracting Parties shall regularly exchange any information on illegal migration that is gleaned from their document advisers' work.

3. In seconding document advisers, the Contracting Parties may entrust one Contracting Party with coordination of specific measures. Such coordination may be temporary in nature.

Article 21

Document advisers' duties

Document advisers seconded by Contracting Parties shall have the following duties in particular:

- (1) advising and training Contracting Parties' representations abroad on passport and visa matters, particularly detection of false or falsified documents, and on document abuse and illegal migration;
- (2) advising and training carriers on their obligations under the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders and under Annex 9 to the Chicago Convention of 7 December 1944 on International Civil Aviation and on the detection of false or falsified documents and the relevant immigration rules, and
- (3) advising and training the host country's border control authorities and institutions.

This shall not affect the powers of the Contracting Parties' representations abroad and border control authorities.

Article 22

National contact and coordination points

The Contracting Parties shall designate contact and coordination points to be approached on concerted arrangements for document adviser secondment and on preparation, implementation, guidance and assessment of advice and training schemes.

Article 23

Assistance with repatriation measures

1. The Contracting Parties shall assist one another with repatriation measures, in compliance with EU Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals, from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders and EU Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air. They shall inform one another of planned repatriation measures in good time and, as far as possible, shall give other Contracting Parties an opportunity to participate. For joint repatriation measures, Contracting Parties shall together agree on arrangements for escorting those to be repatriated and for security.
2. A Contracting Party may, where necessary, repatriate those to be repatriated via another Contracting Party's territory. A decision on the repatriation measure shall be taken by the Contracting Party via whose territory repatriation is to be carried out. In its decision on repatriation, it shall specify the conditions for implementation and, if necessary, also

impose on those to be repatriated such measures of constraint as are allowed under its own national law.

3. For the purposes of preparing and implementing repatriation measures, the Contracting Parties shall designate national contact points. Experts shall meet regularly in a working party in order to:
 - (1) assess the results of past operations and take them into account in future preparations and implementation;
 - (2) consider and resolve any problems arising from transit as referred to in paragraph 2.

APPENDIX 5: ARTICLE 18 OF PREVIOUS DRAFT OF DECISION

Article 18⁶⁰

Measures in the event of immediate danger

- (1) In urgent situations, officers from one Member State may, without the other Member State's prior consent, cross the border between the two so that, within an area of the other Member State's territory close to the border, in compliance with the host State's national law, they can take any provisional measures necessary to avert immediate danger to life or limb.
- (2) An urgent situation as referred to in paragraph 1 shall be deemed to arise if there is a risk that the danger would materialise while waiting for the host State's officers to act or to take charge as stipulated in Article 17(2).
- (3) The officers crossing the border must notify the host State without delay. The host State shall confirm receipt of that notification and without delay take the necessary measures to avert the danger and take charge of the operation. The officers crossing the border may operate in the host State only until the host State has taken the necessary protective measures. The officers crossing the border shall be required to follow the host State's instructions.
- (4) When adopting this Decision, Member States shall issue a declaration designating the authorities to be notified without delay, as stipulated in paragraph 3. The officers crossing the border shall be required to comply with the provisions of this Article and with the law of the Member State within whose territory they are operating.
- (5) The host State shall assume responsibility for the measures taken by the officers crossing the border.

⁶⁰ From Document 6002/07.

APPENDIX 6: COMPARATIVE TABLE OF INSTRUMENTS ON THE EXCHANGE OF INFORMATION

Title of instrument	Subject Matter	Type of data/information
<p>Principle of availability: Draft Framework Decision on the exchange of information under the principle of availability (COM(2005) 490 of 12 Oct 2005)</p>	<p>Determines the conditions and modalities under which Member States' competent law enforcement authorities, and Europol, would be given online access to databases in another Member State under the same conditions as the equivalent law enforcement authorities in that State have access to their own databases.</p>	<ul style="list-style-type: none"> • DNA profiles • Fingerprint data • Ballistics • Vehicle registration data • Telephone numbers and other communications data • Minimum data for the identification of persons contained in civil registers
<p>Swedish initiative: Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between Member States' law enforcement authorities</p>	<p>Sets up an enhanced mutual assistance procedure for the exchange of law enforcement information.</p>	<p>All information and intelligence which is held by, or available to, law enforcement authorities (except where the request for information would involve the application of coercive measures, but including information which requires judicial authorisation subject to that authorisation being given)</p>
<p>Prüm Decision: Draft Council Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (Doc 7273/07 of 14 March 2007)</p>	<p>Determines the conditions and modalities for cross-border searches and comparison of law enforcement data.</p>	<ul style="list-style-type: none"> • DNA analysis files • Fingerprint data • Vehicle registration data • Personal and non-personal data in connection with major international events

Procedure for exchange	Access and processing bodies	Data protection regime
<p>Competent law enforcement authorities in one Member State would be given direct online access to other Member States' databases. Alternatively, if the information is not available online, then it would be possible to consult index data online, and in the event of a hit to obtain supplementary information in the knowledge that the information exists. There are limited grounds for refusal.</p>	<p>Equivalent police, customs and other competent authorities in all Member States (under specific criteria for ascertaining equivalence), and Europol.</p>	<p>Once adopted, the Data Protection Framework Decision (DPFD)</p> <p>(Draft Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters)</p>
<p>On request, by completing the specific forms provided (Annexes A and B to the Decision). On these forms the requesting and requested authorities are to indicate, among other matters, urgency of the request, type of criminal activity being investigated, what information or intelligence is being requested, reliability of sources, accuracy of information, reasons for any delays etc.</p> <p>There is an obligation to provide information, subject to limited grounds for refusal, within specific time limits.</p>	<p>Any competent law enforcement authority as designated, i.e. national police, customs or other authority authorised by national law to detect, prevent and investigate offences and take coercive measures in the context of such activities (excluding those dealing with national security issues).</p>	<p>Information and intelligence exchange is subject to the national data protection provisions of the receiving state; personal data must be protected in accordance with the Council of Europe 1981 Convention for the protection of individuals with regard to automatic processing of personal data and, for Member States which have ratified it, the 2001 Additional Protocol regarding supervisory authorities and cross-border flows of data; account should be taken of Recommendation R(87) 15 of the Council of Europe on the use of personal data in the police sector.</p>
<p>Member States' authorities are granted online access to one another's databases to search or compare data on a hit/no hit basis. In the case of a hit the next step is to seek related personal data from the Member State administering the file and, where necessary, request further information through mutual assistance procedures, including the procedure set out in the Swedish initiative. When a match is found, there is an obligation to supply further information to the requesting State's contact point.</p>	<p>Designated national contact points.</p>	<p>Level of protection at least equal to the Council of Europe 1981 Convention and 2001 Additional Protocol regarding supervisory authorities and cross-border flow of data; account should be taken of Recommendation R(87) 15. Specific provisions on data processing apply, i.e. purpose limitation, accuracy, storage etc.</p>

APPENDIX 7: LIST OF ABBREVIATIONS

Central SIS II	Central section of the second generation Schengen Information System
CEPS	Centre for European Policy Studies
DCA	Department for Constitutional Affairs
DG JLS	Directorate-General Justice Freedom and Security of the Commission
DPFD	Data Protection Framework Decision
DVLA	Driver and Vehicle Licensing Agency
EC	European Community
EDPS	European Data Protection Supervisor
EU	European Union
Europol	European Police Office, set up under a Convention between Member States
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States
G6 ministers	the ministers of the interior of the six largest Member States: Germany, France, United Kingdom, Italy, Spain and Poland
G6 meetings	the regular six-monthly meetings of G6 ministers
ICO	Information Commissioner's Office
JHA	Justice and Home Affairs
LIBE Committee	Committee on Civil Liberties, Justice and Home Affairs of the European Parliament
PACE	Police and Criminal Evidence Act 1984
Prüm Convention	The name by which the Prüm Treaty was known in the earlier official documents
Prüm Treaty	Treaty between Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal immigration
SIRENE	Supplementary Information Request at the National Entry
SIS	Schengen Information System
SIS II	Second generation Schengen Information System
TEC	Treaty establishing the European Community
TEU	Treaty establishing the European Union

APPENDIX 8: OTHER RELEVANT REPORTS FROM THE SELECT COMMITTEE

Recent Reports from the Select Committee

Annual Report 2006 (46th Report, Session 2005–06, HL Paper 261)

Relevant Reports prepared by Sub-Committee F

Session 2004–05

After Madrid: the EU's response to terrorism (5th Report, HL Paper 53)

The Hague Programme: a five year agenda for EU justice and home affairs (10th Report, HL Paper 84)

Session 2005–06

Behind Closed Doors: the meeting of the G6 Interior Ministers at Heiligendamm (40th Report, HL Paper 221)

Session 2006–07

After Heiligendamm: doors ajar at Stratford-upon-Avon (5th Report, HL Paper 32)

Schengen Information System II (SIS II) (9th Report, HL Paper 49)