

EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION

COM(21)784

Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation (“Prüm II”), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2019/818 of the European Parliament and of the Council

With accompanying documents:

SEC(21)421: Regulatory Scrutiny Board Opinion

SWD(21)378: Impact Assessment Report

SWD(21)379: Executive Summary of the Impact Assessment Report

Submitted by the Home Office, 02 February 2023

SUBJECT MATTER

Prüm is the framework through which EU Member States exchange DNA, fingerprint and vehicle registration data and associated policing information for the prevention, detection and investigation of criminal offences. Anonymised biometric data is automatically exchanged on a hit/no hit basis. Where a match is confirmed by a forensic expert, law enforcement authorities can request information about the subject and associated crimes. The UK exchanges DNA and fingerprint data with EU Member States under similar terms through Part 3, Title II of the UK-EU Trade and Cooperation Agreement.

Prüm II is an EU legislative proposal that will seek to build on the existing framework by introducing new data categories and allowing interoperability with other EU information systems. The Commission’s proposals are expected to change as they pass through the current EU’s internal negotiations, including the trilogue process with the European Parliament. However, they may include exchange of facial image data for biometric matching and police records. They may also enable Member States to automatically check third country-sourced biometric data held at Europol.

It is expected that Prüm II will speed up the exchange of information between EU Member States following a match as it standardises response times. It will also introduce a centralised router which would facilitate faster information flow. This is a hybrid approach between a decentralised and centralised solution.

SCRUTINY HISTORY

None for this proposal. However, the Chair of the House of Commons European Scrutiny Committee wrote on 12 January and 25 May 2022 in relation to this proposal and the Government replied on 29 April and 20 July 2022, copied to the Chair of the House of Lords European Affairs Committee.

MINISTERIAL RESPONSIBILITY

The Secretary of State for the Home Department has responsibility for UK Government policy relating to international biometric sharing. The Foreign Secretary holds Ministerial responsibility for the UK's relationship with Europe and the European Union. The Secretary of State for Justice also retains an interest due to the potential impact on criminal justice and the Chancellor of the Exchequer has an interest in respect of the budget.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

International affairs are reserved under the UK's devolution settlement. The Scottish Government and Northern Ireland Assembly will, however, have an interest and the devolved administrations will be consulted regarding implications for law enforcement in their jurisdictions once the proposals are finalised.

LEGAL AND PROCEDURAL ISSUES

i. **Legal Base:** The legal basis of this proposal are the following provisions of the Treaty on the Functioning of the European Union (TFEU): Article 16(2), Article 87(2)(a) and Article 88(2).

ii. **Voting Procedure:** The Council shall act by a qualified majority throughout the procedure.

iii. **Timetable for adoption and implementation:** The proposals are subject to ordinary legislative procedure. It is anticipated that the final legislative text could be adopted by the Council by the summer or autumn 2023, however trilogue between the Commission, Council and European Parliament has not yet started. Should the UK wish to participate in Prüm II, the relevant provisions of the UK-EU Trade and Cooperation Agreement would need to be amended accordingly. Article 541 provides for a formal nine-month consultation process, renewable once, from the moment the EU notifies the UK of intent to amend the provisions.

POLICY IMPLICATIONS

Prüm is a vital investigative tool for law enforcement and the UK has been rolling out new fingerprint and DNA connections to EU Member States having successfully completed the ex-ante evaluation of our readiness to operate the arrangements under the Trade and Cooperation Agreement.

Prüm II is expected to standardise and streamline cooperation between participating States. As Prüm II will introduce new methods of exchange using more advanced technical infrastructure, it is likely that the UK will not be able to participate in data exchanges indefinitely using the existing infrastructure and processes.

The TCA includes a provision allowing for UK participation in future iterations of Prüm. Article 541 (Part 3 of Title II of the TCA) states: "*In the event that the Union considers it necessary to amend this Title because Union law relating to the subject matter governed by this Title is amended substantially, or is in the process of being amended substantially, it may notify the United Kingdom accordingly with a view to*

agreeing on a formal amendment of this Agreement in relation to this Title. Following such notification, the Parties shall engage in consultations". We would therefore expect to enter into detailed discussions with the EU on changes to the TCA as the new proposals near completion and both sides have more clarity on what they would require. Any decision on future UK participation will be taken once we have that clarity.

CONSULTATION

As Prüm II is expected to change current operating practices and introduce new data categories, we will consult widely to determine the scale of change and potential benefits to the UK in participating. Consultation is likely to include law enforcement partners, biometrics practitioners, the Forensic and Information Database Services Board, the Forensic Science Regulator and Information Commissioner, and the devolved Governments.

FINANCIAL IMPLICATIONS

To be considered once the final proposals are adopted.

A handwritten signature in black ink, appearing to read "Tom Tugendhat". The signature is written in a cursive, flowing style.

Rt Hon Tom Tugendhat MBE VR MP
Security Minister