



Home Office

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Yvette Cooper, MP
Home Affairs Committee
House of Commons
London
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By email only.

15 June 2020

Dear Yvette,

I am writing to inform you of the outcome of a review of the policy of limiting data sharing via Prüm to the DNA profiles of convicted criminals and excluding data which relates to those suspected but not convicted of a crime. It is the Government's intention to begin exchanging suspects' data with connected EU Member States through Prüm and Tim Barrow will shortly be notifying the EU Council of that intention.

As your Committee will be aware, the UK began exchanging Prüm DNA with EU Member States in July 2019, connecting to nine EU Member States during this time. This exchange involves a two-step process. Step one is to send anonymised biometric data to the connected partner for it to be searched against their database, providing a 'hit/no hit' result. Where there is a match against the anonymised data, step two kicks in, during which the relevant demographic data is shared, i.e. name, and date of birth. A series of stringent checks are carried out by UK law enforcement agencies before any demographic or identifying data is provided, and only if the Member State submits a separate request for this data. These checks include verifying the information is lawfully retained in the UK before information is provided. This step two process minimises risks to individuals and ensure that only identifying data that should be shared, is in fact shared.

European Council Implementing Decision of 6 June 2019 required the UK complete a review of its policy of excluding suspects' data from automated DNA exchange by 15 June 2020. My officials and operational partners have now undertaken that review on the basis of our experience of the first 11 months of operating Prüm DNA. From searches of historic data held on the UK's national DNA database, around 12,000 initial hits have been identified. EU Member States have received approximately 41,000 initial hits from matching their data with that held by the UK. These hits have already delivered public protection benefits. For example, an unidentified crime stain from a sexual assault in Glasgow in 2012 was identified as a subject convicted for theft offences in Austria and that investigation is now being progressed in way that would not have been possible were it not for the Prüm exchange.

Furthermore, the National Crime Agency and the Metropolitan Police Service recommend that suspects' data is shared through Prüm. Doing so would mean that more UK data stores are being checked across the EU, supplementing intelligence for investigations, including in relation to serious organised crime, terrorism and cross-border crime. These agencies have identified that there are risks and missed opportunities associated with not sharing suspects' data. For example, the inclusion of UK data taken from a person suspected of rape - where conviction rates are disappointingly low - could allow a match to be made with data held in the EU where that person may have been previously suspected or convicted of a sexual offence elsewhere.

I have therefore concluded that there are important public safety benefits in exchanging suspects' data. In reaching a decision to include suspects' data, I have carefully balanced the public protection benefits against concerns that there might be a potential risk to innocent UK citizens being caught up unnecessarily in criminal investigations in EU Member States. I have also considered the effectiveness of the safeguards in place to prevent such instances occurring.

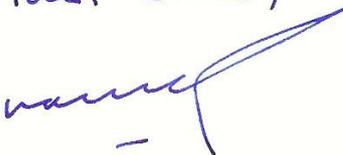
I am acutely aware of the importance of retaining those other Prüm safeguards, debated and voted on by Parliament in 2015. The introduction of an independent oversight board; the requirement that low quality matches be excluded from Prüm searching; the introduction of an additional step where a 'hit' involved data which relates to a minor data; and the exclusion of data held for only a short period in relation to vulnerable persons were introduced to protect against innocent UK citizens being caught up unnecessarily in overseas criminal investigations and have been in operation since July 2019. I judge these to be working well. They are providing essential protections against UK citizens' data being used unnecessarily and unreasonably. Ensuring continued adherence to the UK's scientific standards means that there is a one in a billion chance that a UK DNA sample would be falsely matched with an overseas criminal investigation. Moreover, the two-step Prüm process means that a law enforcement officer in the UK checks the data against set criteria before providing any identifying data to the requesting state. These checks ensure that the information is lawfully retained and that providing the information would not endanger any UK investigation.

In particular, I have considered the potential risk of sharing suspects' data as it concerns individual freedoms. However, I am reassured by protections in legislation which carefully govern the retention of biometric data in England and Wales, and which confer protections to data from individuals who have not been convicted. The Police and Criminal Evidence Act 1984 (PACE), as amended by the Protection of Freedoms Act 2012, creates a strict retention regime which sets out that data must be deleted within a set period, depending on the circumstances in which it was collected. This regime is based on factors such as the age of the individual at the time of the offence, and the seriousness of the offence. This regime ensures that suspects' data constitutes only c2% of the profiles in the DNA and fingerprint databases. PACE also provides the legal basis for sharing suspects' biometric data and further legislation will not be required to enable this change. Whilst the legal situation is distinct in Northern Ireland and Scotland as criminal justice and policing are devolved, I have consulted the Northern Irish Executive and Scottish Government and they have confirmed they consent to the revised policy.

I am mindful of the 15 June deadline imposed by the EU Council and that our current policy **position puts us out of step with EU Member States**. Given the operational benefits described above and the safeguards that will continue to operate, I am therefore intending to communicate the UK's changed approach on suspects' data to the EU Council on 15 June, in line with the Council Decision.

I am writing in similar terms to Sir William Cash, Chair of the European Scrutiny Committee; Earl Kinnoull, Chair of the Lords European Union Committee; and to Elizabeth Hunt and Dominic Stockbridge, Clerks to your Committee; Les Saunders, Cabinet Office; and Alejandra Bernal, Home Office EU Select Committee lead.

I am also laying a Written Ministerial Statement to ensure Parliament are fully informed of the Government's intention.

Yours ever,


**RT HON JAMES BROKENSHERE
MINISTER OF STATE FOR SECURITY**