

European Scrutiny Committee

House of Commons, London, SW1A 0AA

Tel (020) 7219 3292 Email escom@parliament.uk Website www.parliament.uk/escom

From: Sir William Cash MP

3 September 2020

Rt Hon. James Brokenshire MP
Minister of State for Security
Home Office
2 Marsham Street
London SW1P 4DF

**Cross-border police cooperation: the automated exchange of DNA and fingerprint data under Prüm
(Council Implementing Decision (EU) 2019/968 and Council document 14247/19) (ESC numbers 40679 and 41121)**

Thank you for your [letter of 22 July 2020](#) responding to concerns we raised in our [Fifteenth Report of Session 2019-21](#) and in [our letter of 2 July 2020](#) about the Government's decision to share the DNA profiles and fingerprint data of criminal suspects in the biometric exchanges authorised by the Prüm Decisions, its engagement with Parliament during the policy review process, and the prospects for a Prüm data sharing agreement with the EU after transition.

The starting point for our scrutiny of the Council Implementing Decisions authorising the UK to take part in the automated exchange of DNA profiles and fingerprint data is the position set out in the [Prüm Business and Implementation Case](#) published by the (then) Government in November 2015. It says:

In accordance with stated policy, if Parliament votes to rejoin the Prüm Decisions, it is the intention of the Government to allow Member States to only search the DNA profiles or fingerprints of those who have been convicted in the UK.¹

In the [debate seeking Parliament's approval for the UK to rejoin Prüm](#) on 8 December 2015, the then Home Secretary (Rt Hon Theresa May MP) gave an undertaking that "only the DNA profiles and fingerprints of those convicted of a crime can be searched against" and that the Government would "write that into

¹ See p.49 of Command Paper 9149.

legislation”. In closing the debate, you recognised the “crucial” need to balance “security, public protection and civil liberties” and, to that end, made clear that you and the Home Secretary had “insisted that searches should only be made against the DNA and fingerprints of those convicted [...]” and that oversight arrangements would be put in place to ensure that Prüm protects the public in a way that fully respects civil liberties.²

The Biometrics Commissioner (Professor Paul Wiles) forms part of these oversight arrangements. So too does the Forensic Information Database Service Strategy Board (FIND-SB) which monitors the performance of the UK’s national DNA and fingerprint databases and issues guidance to the police on the use of the databases.³ The Biometric Commissioner’s [annual report for 2019](#) sets out the safeguards agreed to by Parliament in December 2015, the first being a condition that “that only the DNA profiles and fingerprints of persons convicted of a crime will be made available for searching by EU Member States”. This is also reflected in the [policy document published by FINDS in July 2019](#) which makes clear that reference data for Prüm held in the UK’s national DNA database is “wholly limited” to those convicted of a recordable offence, not criminal suspects.

We accept that it is entirely appropriate for the Government to review its policy on the sharing of criminal suspects’ biometric data, to do so in close consultation with operational partners, and to be informed by their assessment of the public safety benefits. You do not, however, address our central concern: the apparent lack of engagement with Parliament during the review process or involvement of Parliament in evaluating and endorsing the outcome of the review and the change in policy. We are also concerned that your Written Ministerial Statement makes no mention of wider stakeholder consultation on a policy change which has clear implications for the protection of civil liberties. We note your assurance that “strong safeguards” remain in place, but as you will be aware, they are no longer the same as those agreed to by Parliament in December 2015 when it determined the basis on which the UK would participate in Prüm.

The consequence of the Government’s policy change is that more data, with fewer safeguards, will be shared with EU Member States now that the UK has left the EU than was the case when the UK itself was a Member State. We consider that this requires further explanation and ask you to tell us:

² Hansard 8 December 2015, cols 914-963.

³ FIND-SB is chaired by a representative of the National Police Chiefs’ Council (NPCC) and includes representatives of the Home Office and of the Police and Crime Commissioners who are the voting members. Also in attendance as observers are the Chair of the Biometrics and Forensic Ethics Group, the Forensic Science Regulator, the Biometrics Commissioner, the Information Commissioner and representatives of the devolved administrations.

- Why the safeguard limiting Prüm exchanges to the DNA profiles and fingerprints of convicted criminals (as set out in the draft legislation proposed by the Government in [Annex J of Command Paper 9149](#)) was not enshrined in UK law when the Government indicated that it would be;
- If, as indicated in your [letter of 15 June 2020](#), no changes to UK law are necessary to allow the sharing of criminal suspects' biometric data, what practical means have been taken to implement the Government's policy change;
- Whether the Government considered the need for a data protection impact assessment under [section 64 of the Data Protection Act 2018](#) before proceeding to the exchange of criminal suspects' biometric data with EU partners;
- Whether the Biometrics Commissioner and other interested stakeholders were consulted on the proposed policy change and how, in broad terms, they responded;
- Whether the [policy advice](#) issued by the Home Office's Forensic Information Database Service (FINDS) in June 2019 on *International DNA and Fingerprint Exchange Policy for the UK* has been updated to reflect the Government's change in policy; and
- Why the Government considered it appropriate to announce by Written Ministerial Statement a policy change which overturns the assurances accepted by Parliament in a Resolution of the House agreed in December 2015 without further recourse to and consultation of Parliament (through a debate and vote).

We recognise that all Prüm data exchanges will cease at the end of the transition period on 31 December 2020. However, the Government's approach to its Prüm policy review and your unwillingness to address the questions we have raised about the implications and intended effect of provisions contained in the [UK's draft agreement on law enforcement and judicial cooperation in criminal matters](#) in our [Fifteenth Report of Session 2019-21](#) and [our letter of 2 July 2020](#) does little to assure us that Parliament will have the information it needs, or adequate opportunity, to ensure effective and meaningful scrutiny as the end of the transition period approaches. Whilst we have no further questions to raise on the Council Implementing Decisions, we ask you to provide an update on the progress being made in negotiations with the EU on agreeing capabilities similar to those delivered by Prüm as part of a future agreement on criminal justice and law enforcement cooperation.

We look forward to receiving your response within ten working days.

I am copying this letter to the Chair (Rt Hon Hilary Benn MP) and Clerk (Gordon Clarke) of the Committee on the Future Relationship with the European Union; the Chair (Rt Hon Yvette Cooper MP) and Clerk (Elizabeth Hunt) of the Home Affairs Committee; the Chair (Sir Robert Neill MP) and the Clerk (David Weir) of the Justice Committee; the Chair (Rt Hon Harriet Harman QC MP) and the Clerk (Lucinda Maer) of the Joint Committee on Human Rights; the Chair (Rt Hon Greg Clark MP) and Clerk (Danielle Nash) of the Science and Technology Committee; the Chair (the Earl of Kinnoull) and Clerk (Stuart Stoner) of the Lords European Union Committee; Alex Bernal of your Department; and Les Saunders and Donald Harris in the Cabinet Office.

CHAIR