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NOTE

from: Council Secretariat

to: delegations

Subject: Prüm Convention

Delegations will find attached, for their information, the Convention 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.

The Convention was signed by the contracting parties in Prüm (Germany) on 27 May 2005.

Convention

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

The High Contracting Parties to this Convention, being Member States of the European Union,

Considering that in an area with free movement of persons it is important for Member States of the European Union to step up their cooperation, in order to combat terrorism, cross-border crime and illegal migration more effectively,

Endeavouring, without prejudice to the provisions of the Treaty on European Union and the Treaty establishing the European Community, for the further development of European cooperation, to play a pioneering role in establishing the highest possible standard of cooperation, especially by means of improved exchange of information, particularly in combating terrorism, cross-border crime and illegal migration, while leaving participation in such cooperation open to all other Member States of the European Union,

Seeking to have the provisions of this Convention brought within the legal framework of the European Union, in order to improve exchange of information within the European Union, particularly in combating terrorism, cross-border crime and illegal migration, and to establish the necessary legal and technical conditions for that purpose,

In observance of the fundamental rights deriving from the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional traditions common to the States concerned, particularly in the awareness that the supply of personal data to another Contracting Party requires a reasonable standard of data protection on the part of the receiving Contracting Party.

Considering that, without prejudice to current national law, provision should be made for measures under this Convention to remain subject to suitable judicial review,

Seeking to supplement this Convention with further agreements, allowing automated searching of data in other appropriate records, in so far as is necessary and reasonable for the purpose of stepping up cross-border cooperation,

Have agreed as follows:

Chapter 1

General aspects

Article 1

Basic principles of the Convention

1. By means of this Convention, the Contracting Parties intend to step up cross-border cooperation, particularly mutual exchange of information.
2. Such cooperation is without prejudice to European Union law and open for any Member State of the European Union to join, in accordance with this Convention.
3. Cooperation under this Convention is aimed at devising initiatives to promote European cooperation in the fields laid down in this Convention.
4. 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.
5. The Contracting Parties shall regularly submit joint progress reports on cooperation to the Council of the European Union and the European Commission.

Chapter 2

DNA profiles and fingerprinting and other data

Article 2

Establishment of national DNA analysis files

1. The Contracting Parties hereby undertake to open and keep national DNA analysis files for the investigation of criminal offences. Processing of data kept in those files, under this Convention, shall be carried out subject to its other provisions, in compliance with the national law applicable to the processing.
 2. For the purpose of implementing Convention, the Contracting Parties 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. Reference data must not contain any data from which the data subject can be directly identified. Reference data not traceable to any individual (untraceables) must be recognisable as such.
 3. When depositing instruments of ratification, acceptance, approval or accession, each Contracting Party shall specify the national DNA analysis files to which Articles 2 to 6 are applicable and the conditions for automated searching as referred to in Article 3(1).
- * For the Federal Republic of Germany, DNA profiles as referred to in this Convention shall mean *DNA-Identifizierungsmuster*. (DNA identification patterns).

Article 3

Automated searching of DNA profiles

1. For the investigation of criminal offences, the Contracting Parties shall allow other Contracting Parties' 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. Search powers may be exercised only in individual cases and in compliance with the searching Contracting Party's national law.
2. Should an automated search show that a DNA profile supplied matches a DNA profile entered in the Contracting Party's file searched, the searching contact point shall receive automated notification of the hit and the reference. 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 Contracting Parties shall, by mutual consent, via their national contact points, compare the DNA profiles of their untracables with all DNA profiles from other national DNA analysis files' reference data. Profiles shall be supplied and compared in automated form. DNA profiles of untraceables shall be supplied for comparison only where provided for under the requesting Contracting Party's national law.
2. Should a Contracting Party, in the comparison referred to in paragraph 1, find that any DNA profiles supplied match those in its DNA analysis file, it shall without delay supply the other Contracting Party'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 procedure referred to in Articles 3 and 4 show a match between DNA profiles, the supply of any available further 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 Contracting Party.

Article 6

National contact point and implementing agreement

1. For the purposes of the supply of data as referred to in Articles 3 and 4, each Contracting Party shall designate a national contact point. The powers of the contact point shall be governed by the national law applicable.
2. Details of technical arrangements for the procedures set out in Articles 3 and 4 shall be laid down in an implementing agreement as referred to in Article 44.

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 Contracting Party's territory, the requested Contracting Party shall provide legal assistance by collecting and examining cellular material from that individual and by supplying the DNA profile obtained, if:

- (1) the requesting Contracting Party specifies the purpose for which this is required;

- (2) the requesting Contracting Party produces an investigation warrant or statement issued by the competent authority, as required under that Contracting Party's law, showing that the requirements for collecting and examining cellular material would be fulfilled if the individual concerned were present within the requesting Contracting Party's territory, and
- (3) under the requested Contracting Party's law, the requirements for collecting and examining cellular material and for supplying the DNA profile obtained are fulfilled.

Article 8

Fingerprinting data

For the purpose of implementing this Convention, the Contracting Parties 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 fingerprinting data and a reference. Reference data must not contain any data from which the data subject can be directly identified. Reference data not traceable to any individual (untraceables) must be recognisable as such.

Article 9

Automated searching of fingerprinting data

1. For the prevention and investigation of criminal offences, the Contracting Parties shall allow other Contracting Parties' 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 fingerprinting data. Search powers may be exercised only in individual cases and in compliance with the searching Contracting Party's national law.

2. Firm matching of fingerprinting data with reference data held by the Contracting Party in charge of the file shall be carried out by the searching national contact point 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 fingerprinting data, the supply of any available further 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 Contracting Party.

Article 11

National contact point and implementing agreement

1. For the purposes of the supply of data as referred to in Article 9, each Contracting Party shall designate a national contact point. The powers of the contact point shall be governed by the national law applicable.
2. Details of technical arrangements for the procedures set out in Article 9 shall be laid down in an implementing agreement as referred to in Article 44.

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 State, as well as in maintaining public order and security, the Contracting Parties shall allow other Contracting Parties' 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:

- (1) data relating to owners or operators, and
- (2) data relating to vehicles.

Searches may be conducted only with a full chassis number or a full registration number. Search powers may be exercised only in compliance with the searching Contracting Party's national law.

2. For the purposes of the supply of data as referred to in paragraph 1, each Contracting Party shall designate a national contact point for incoming requests. The powers of the contact point shall be governed by the national law applicable. Details of technical arrangements for the procedure shall be laid down in an implementing agreement as referred to in Article 44.

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, the Contracting Parties shall, both upon request and of their own accord, in compliance with the supplying Contracting Party's national law, supply one another with any non-personal data required for that purpose.

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, the Contracting Parties shall, both upon request and of their own accord, in compliance with the supplying Contracting Party's national law, 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 Contracting Party'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 are no longer achievable. 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 Contracting Party shall designate a national contact point. The powers of the contact point shall be governed by the national law applicable.

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.

Chapter 5

Other forms of cooperation

Article 24

Joint operations

1. In order to step up police cooperation, the competent authorities designated by the Contracting Parties 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 (hereinafter referred to as "officers") from other Contracting Parties participate in operations within a Contracting Party's territory.
2. Each Contracting Party may, as a host State, in compliance with its own national law, with the seconding State's consent, confer sovereign powers on other Contracting Parties' officers involved in joint operations or, in so far as the host State's law permits, allow other Contracting Parties' officers to exercise their sovereign powers in accordance with the seconding State's law. Such sovereign powers may be exercised only under the guidance and, as a rule, in the presence of officers from the host State. Other Contracting Parties' officers shall be subject to the host State's national law. The host State shall assume responsibility for their actions.
3. Other Contracting Parties' officers involved in joint operations shall be subject to the instructions given by the host State's competent authority.
4. Practical aspects of cooperation shall be governed by implementing agreements as referred to in Article 44.

Article 25

Measures in the event of imminent danger

1. In urgent situations, officers from one Contracting Party may, without another Contracting Party's prior consent, cross the border between the two so that, within an area of the other Contracting Party's territory close to the border, in compliance with the host State's national law, they can take any provisional measures necessary to avert imminent danger to the physical integrity of individuals.
2. An urgent situation as referred to in paragraph 1 shall be deemed to arise if there is a risk that the danger will materialise in the event of waiting for the host State's officers to act or to take charge as stipulated in Article 24(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. The Contracting Parties shall specify in a separate agreement 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 Contracting Party within whose territory they are operating.
5. The host State shall assume responsibility for the measures taken by the officers crossing the border.

Article 26

Assistance in connection with major events, disasters and serious accidents

The Contracting Parties' competent authorities shall provide one another with mutual assistance, in compliance with national law, in connection with mass gatherings and similar major events, disasters and serious accidents, by:

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

This shall not affect any international agreements in which the Contracting Parties participate with regard to mutual assistance in the event of disasters and serious accidents.

Article 27

Cooperation upon request

1. The Contracting Parties' competent authorities shall provide one another with assistance, upon request, within the scope of their powers and in compliance with their own national law.
2. The Contracting Parties' competent authorities shall provide one another with assistance, in accordance with the first sentence of Article 39(1) of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, in particular by:
 - (1) identifying owners and operators of vehicles and providing information on drivers, masters and captains of vehicles, vessels and aircraft, in so far as not already provided for in Article 12;

- (2) supplying information on driving licences, navigation licences and similar permits;
 - (3) ascertaining individuals' whereabouts and place of residence;
 - (4) checking on residence permits;
 - (5) ascertaining the identity of telephone subscribers and subscribers to other telecommunications services, where publicly accessible;
 - (6) establishing the identity of individuals;
 - (7) investigating the origin of items such as arms, motor vehicles and vessels (enquiries via trade channels);
 - (8) supplying data from police databases and police records and supplying information from official records accessible to the public;
 - (9) issuing urgent alerts concerning arms and explosives and alerts concerning currency counterfeiting and securities fraud;
 - (10) supplying information on practical implementation of cross-border surveillance, cross-border hot pursuit and controlled deliveries, and
 - (11) ascertaining an individual's willingness to make a statement.
3. If the requested authority is not empowered to deal with a request, it shall pass the request on to the authority empowered to do so. The requested authority shall notify the requesting authority of the passing on of the request and of the authority empowered to deal with it. The latter authority shall deal with the request and send the requesting authority the result.

Chapter 6

General provisions

Article 28

Use of arms, ammunition and equipment

1. Officers from a Contracting Party who are involved in a joint operation within another Contracting Party's territory may wear their own national uniforms there. They may carry such arms, ammunition and equipment as they are allowed to under the seconding State's national law. Any Contracting Party may prohibit the carrying of particular arms, ammunition or equipment by a seconding State's officers.
2. The arms, ammunition and equipment listed in Annex 2 may be used only in legitimate defence of officers themselves or of others. The host 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 that specified in the first sentence. The use of arms, ammunition and equipment shall be governed by the host 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. The Contracting Parties may amend Annex 2 by means of a separate agreement.
4. If officers from a Contracting Party make use of vehicles in action under this Convention within another Contracting Party's territory, they shall be subject to the same road traffic regulations as the host State's officers, including as regards right of way and any special privileges.
5. Practical aspects of the use of arms, ammunition and equipment shall be governed by an implementing agreement as referred to in Article 44.
6. This article shall apply without prejudice to Article 18.

Article 29
Protection and assistance

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

Article 30
General rules on liability

Liability under this Convention shall be governed by Article 43 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders. The first sentence shall not apply to Articles 17 and 18.

Article 31
Criminal liability

Officers operating within another Contracting Party's territory, under this Convention, shall be treated in the same way as that other Contracting Party's officers with regard to any criminal offences that might be committed by or against them, save as otherwise provided in any other agreement applicable to the Contracting Parties.

Article 32
Employment relationship

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

Chapter 7

General provisions on data protection

Article 33

Definitions, scope

1. For the purposes of this Convention:
 - 1) "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 Convention shall also include communicating whether or not a hit exists.
 - 2) "automated search procedure" shall mean direct access to the automated files of another body where the response to the search procedure is fully automated.
 - 3) "referencing" shall mean the marking of stored personal data without the aim of limiting their processing in future.
 - 4) "blocking" shall mean the marking of stored personal data with the aim of limiting their processing in future.
2. The following provisions shall apply to data which are or have been supplied pursuant to this Convention, save as otherwise provided in the preceding chapters.

Article 34

Level of data protection

1. As regards the processing of personal data, which are or have been supplied pursuant to this Convention, each Contracting Party 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 Convention may not take place until the provisions of this chapter have entered into force in the national law of the territories of the Contracting Parties involved in such supply. The Committee of Ministers shall decide in accordance with Article 43 whether the conditions have been met.

Article 35

Purpose

1. Processing of the personal data by the receiving Contracting Party shall be permitted solely for the purposes for which they have been supplied in accordance with this Convention; processing for other purposes shall be permitted solely with the prior authorisation of the Contracting Party administering the file and subject only to the national law of the receiving Contracting Party. Such authorisation may be granted provided that processing for such other purposes is permitted under the national law of the Contracting Party administering the file.

2. Processing of data supplied pursuant to Articles 3, 4 and 9 by the searching or comparing Contracting Party shall be permitted solely in order to:

1. establish whether the compared DNA profiles or fingerprinting data match;
2. prepare and submit a police or judicial request for legal assistance in compliance with national law if those data match;
3. record within the meaning of Article 39.

The Contracting Party 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 39. 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 2 and 3 of paragraph 2 above.

3. Data supplied in accordance with Article 12 may be used by the Contracting Party administering the file solely where this is necessary for the purpose of providing automated replies to search procedures or recording as specified in Article 39. The supplied data shall be deleted immediately following automated replies to searches unless further processing is necessary for recording pursuant to Article 39. When replying, the searching Contracting Party may solely use received data for the procedure for which the search procedure was made.

Article 36

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 35. In particular, data may be supplied to other entities only with the prior authorisation of the supplying Contracting Party and in compliance with the law of the receiving Contracting Party.

Article 37

Accuracy, current relevance and storage time of data

1. The Contracting Parties must ensure the accuracy and current relevance of personal data. Should it emerge from a notification by the data subject or otherwise that incorrect data or data which should not have been supplied have been supplied, this must be notified without delay to the receiving Contracting Party or Parties. The Contracting Party or Parties concerned shall be obliged to correct or delete the data. Moreover, supplied personal data must be corrected if they are found to be incorrect. If the receiving entity has reason to believe that the supplied data are incorrect or should be deleted the supplying authority must be informed forthwith.
2. Data, the accuracy of which the data subject contests and the accuracy or inaccuracy of which cannot be established must be marked with a flag at the request of the data subject in accordance with the national law of the Contracting Parties. If a flag exists, this may be removed subject to the national law of the Contracting Parties and only with the permission of the data subject or based on a decision of the competent court or the independent data protection authority.
3. Personal data supplied which should not have been supplied or received must be deleted. Data which is lawfully supplied and received must be deleted:
 1. if they are not or no longer necessary for the purpose for which they were supplied; if personal data have been supplied and were not requested, the receiving body must immediately check if they are necessary for the purposes of the supply.
 2. following the expiry of the maximum period for keeping data laid down in the national law of the supplying Contracting Party where the supplying body informed the receiving body of those maximum periods 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 deleted in compliance with national law. Blocked data may be supplied or used solely for the purpose for which the data was not deleted.

Article 38

Technical and organisational measures to protect personal data 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 specific features of the technical specification of the automated search procedure is regulated in an implementation agreement within the meaning of Article 44 which guarantees that:
 1. state-of-the-art technical measures are taken to ensure data protection and data security, in particular data confidentiality and integrity;
 2. encryption and authorisation procedures recognised by the competent authorities are used when having recourse to generally accessible networks and;
 3. the admissibility of searches in accordance with Article 39(2)(4) and (5) can be checked.

Article 39

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

1. Each Contracting Party shall guarantee that every non-automated supply and every non-automated receipt of personal data by the body administering the file and the searching body is logged in order to verify the admissibility of the supply. Logging shall contain the following information:
 1. the reason for the supply;
 2. the data supplied;
 3. the date of the supply; and
 4. the name or reference of the searching body and the body administering the file.

2. The following shall apply to automated searches for data based on Articles 3, 9 and 12 or automated comparison pursuant to Article 4:
 1. Only specially authorised officers of the national contact bureaux 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 below and to the other Contracting Parties.

 2. Each Contracting Party shall ensure that each supply and receipt of personal data by the body administering the file and the searching body is recorded, including communication of whether or not a hit exists. Recording shall include the following information:

- (a) the data supplied;
- (b) the date and exact time of the supply and;
- (c) the name or reference of the searching body and the body administering the file.

The searching body shall also record the reason for the search or supply as well as the identifying mark of 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 bodies of the relevant Contracting Party at the latest within four weeks following receipt of the request. Recorded data may be used solely for the following purposes:
 1. monitoring data protection;
 2. ensuring data security.
4. The recorded data must be protected with suitable measures against inappropriate use and other forms of improper use and must be kept for two years. After the conservation period the recorded data must 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 Contracting Parties. Anyone can request these bodies to check the lawfulness of the processing of data in respect of their person in compliance with national law. Independently of such requests, these bodies and the bodies responsible for recording must carry out random checks on the lawfulness of supply, based on the files involved. The results of such checks must be kept for inspection for 18 months by the independent data protection authorities. After this period, they must be immediately deleted. Each data protection body may be requested by the independent data protection authority of another Contracting Party to exercise its powers in accordance with national law.

The independent data protection authorities of the Contracting Parties shall perform the inspection tasks necessary for mutual cooperation, in particular by exchanging targeted information.

Article 40

Rights of the data subjects and damages

1. At the request of the competent body 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 and its origin, 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 Contracting Parties 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 a 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 Council of the European Union 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 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 state where the data subject asserts his rights.
2. Where a body of one Contracting Party supplied personal data under this Convention, the receiving body of another Contracting Party, in the framework of its liability under national law vis-à-vis the injured party, cannot claim that the supplied data were inaccurate. If damages are awarded against the receiving body because of its use of inaccurate supplied data, the Contracting Party which supplied the data shall refund in full to the receiving body the amount paid in damages.

Article 41

Information requested by the Contracting Parties

The receiving Contracting Party shall inform the supplying Contracting Party of the processing of supplied data and the result obtained.

Chapter 8

Implementing and final provisions

Article 42

Declarations

1. Upon depositing the act of ratification, acceptance, approval or accession, each Contracting Party shall designate the authorities responsible for applying this Convention by submitting a declaration to the country acting as depositary.

It shall indicate:

1. the national contact points, mentioned in Article 6(1) for DNA analysis;
2. the national contact points, mentioned in Article 11(1) for fingerprinting data;
3. the national contact points, mentioned in Article 12(2) for vehicle registration data;
4. the national contact points, mentioned in Article 15 for the exchange of information in connection with major events;

5. the national contact points, mentioned in Article 16(3) for information on the prevention of terrorist offences;
 6. the national contact and coordination points, mentioned in Article 19 for air marshals;
 7. the national contact and coordination points; mentioned in Article 22 for document advisers;
 8. the national contact points, mentioned in Article 23(3) to prepare and implement repatriation measures;
 9. competent authorities and officers within the meaning of Articles 24 up to and including 27.
2. The declarations submitted may be amended at any time, in full or in part, in accordance with the procedure referred to in paragraph 1.

Article 43
Committee of Ministers

1. The Contracting Parties shall set up a Committee made up of ministers from the Contracting Parties. The Committee of Ministers shall take the necessary decisions on the implementation and application of this Convention. Decisions of the Committee of Ministers shall be taken by all Contracting Parties on the basis of unanimity.
2. To assist the Committee of Ministers, a joint working group made up of representatives of the Contracting Parties shall check the implementation and the interpretation of this Convention and shall decide on the need to supplement or further develop it. The joint working group shall meet at the request of a Contracting Party.

Article 44
Implementing agreements

On the basis and within the scope of this Convention, the Contracting Parties' competent authorities may conclude agreements for its administrative implementation.

Article 45
Territorial coverage

The provisions of this Convention shall apply to the territory of the Contracting Parties. As regards the Kingdom of the Netherlands, this Convention shall apply only to the European territory of the Kingdom of the Netherlands. As regards the French Republic, this Convention shall apply only to the European territory of the French Republic.

Article 46
Costs

Each Contracting Party shall bear the costs incurred by its authorities in implementing this Convention. In special cases, the Contracting Parties concerned may agree on different arrangements.

Article 47
Relationship with other bilateral or multilateral agreements

1. The provisions of this Convention shall apply only in so far as they are compatible with European Union law. Should the European Union in future introduce arrangements affecting the scope of this Convention, European Union law shall take precedence in applying the relevant provisions of this Convention. The Contracting Parties may amend or replace the provisions of this Convention in view of those new arrangements resulting from European Union law.

2. This Convention shall not affect rights and obligations under any existing bilateral or multilateral agreements between the Contracting Parties. It shall be open to the Contracting Parties to apply any existing bilateral or multilateral agreements in relations between them. In the event of a conflict with rights or obligations under such agreements, the provisions of this Convention shall apply.

Article 48

Ratification, acceptance or approval

This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the depositary. At the time of depositing instruments of ratification, acceptance or approval, a declaration may be made concerning territorial coverage.

Article 49

Depositary

1. The Government of the Federal Republic of Germany shall act as depositary for this Convention.
2. The depositary shall notify the other Contracting Parties, without delay, of ratifications, acceptances, approvals, accessions, reservations and denunciations, as well as any other declarations in connection with this Convention.
3. The depositary shall have this Convention registered with the United Nations Secretariat, in accordance with Article 102 of the United Nations Charter.

Article 50
Entry into force

1. Ninety days after the deposit of the second instrument of ratification, acceptance or approval, this Convention shall enter into force between those Contracting Parties which have ratified it. For the other Contracting Parties, this Convention shall enter into force ninety days after the deposit of their instruments of ratification.
2. The depositary shall notify all Contracting Parties of the date of entry into force.

Article 51
Accession

1. This Convention shall be open for accession by any Member State of the European Union. Upon accession, acceding States shall also become bound by all implementing agreements up to then concluded under Article 44 and by any other agreements in connection with this Convention.
2. Instruments of accession shall be deposited with the depositary. In the event of accession, at the time of depositing instruments of accession, a declaration may be made concerning territorial coverage.
3. This Convention shall enter into force for any acceding State ninety days after the deposit of its instrument of accession, but not before the date of entry into force of this Convention in accordance with Article 50.

Article 52
Denunciation

1. This Convention is concluded for an indefinite period.

2. This Convention may be denounced by any Contracting Party, at any time, through diplomatic channels, by making a declaration in writing to the depositary. Denunciation shall take effect six months after the deposit of a declaration in writing.

Done at Prüm, this twenty-seventh day of May in the year two thousand and five, in a single original in the German, Spanish, French and Dutch languages, all four texts being equally authentic. The original shall be deposited in the archives of the depositary, which shall send a certified copy of it to each signatory and acceding State.

For the Kingdom of Belgium

For the Federal Republic of Germany

For the Kingdom of Spain

For the French Republic

For the Grand Duchy of Luxembourg

For the Kingdom of the Netherlands

For the Republic of Austria

Convention

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

Information to be contained in the notice in writing, under Article 17(5):

- (1) period of deployment, showing the planned length of stay;
- (2) flight details (including flight numbers and times);
- (3) number of members of the air marshal team;
- (4) full names (surnames and first names) of all members, with the name of the team leader indicated;
- (5) passport numbers;
- (6) make, type and serial number of arms;
- (7) amount and type of ammunition;
- (8) equipment carried by the team for the purposes of its duties.

Convention

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

Arms, ammunition and equipment usable under the first and second sentences of Article 28(2):

(1) Kingdom of Belgium:

- authorised firearms and authorised ammunition;
- authorised pepper sprays and authorised equipment for deployment;
- authorised tear gas and authorised equipment for its deployment;

(2) Federal Republic of Germany:

- authorised firearms and authorised ammunition;

(3) Kingdom of Spain:

- authorised firearms;
- authorised weapons for the user's protection, in accordance with the operating rules of the police unit taking part in a joint operation, such as truncheons (or rubber truncheons), sprays, tear gas and other authorised equipment for deployment;

(4) for the French Republic:

- duty weapons and individual means of constraint, as authorised under national law;

(5) for the Grand Duchy of Luxembourg:

- authorised firearms and authorised ammunition;
- authorised pepper sprays and authorised equipment for deployment;
- authorised tear gas and authorised equipment for deployment;

(6) for the Kingdom of the Netherlands:

- authorised firearms and authorised ammunition;
- authorised pepper sprays and authorised equipment for deployment;
- authorised tear gas and authorised equipment for deployment;

(7) for the Republic of Austria:

- authorised firearms and authorised ammunition;
- authorised pepper sprays and authorised equipment for deployment;

Joint declaration

concerning cooperation 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
under the Convention of 27 May 2005
on the stepping up of cross-border cooperation,
particularly in combating terrorism, cross-border crime and illegal migration

I. All Contracting Parties jointly declare:

- (1) with reference to Article 17(1) of the Convention, that the wording of this provision does not affect the position as regards the powers of the State of operation or of registration in connection with deployment of flight marshals;
- (2) with reference to the second sentence of Article 34(2), that:
 - (a) the conditions for the supply of personal data under Chapter 7 of the Convention, in so far as they do not relate to automated searching or comparison of data, are basically already fulfilled at the time of signing;
 - (b) the Contracting Parties will as soon as possible meet the unfulfilled conditions under Chapter 7, in particular for automated searching or comparison.

II. The Kingdom of Belgium declares:

- (1) with reference to the Convention, that any information supplied by Belgium under it may not be used in evidence without the consent of the relevant Belgian judicial authorities;

- (2) with reference to Article 18, that:
- (a) express consent from a representative of the Belgian aviation authorities will always be required before air marshals can disembark, carrying arms and/or ammunition, from an aircraft, under Article 18(2)(1);
 - (b) upon disembarkation from the aircraft, such arms and/or ammunition are to be handed over to a representative of the Belgian aviation authorities, who will take them in a closed container to a place of safekeeping;
 - (c) the carrying of arms and/or ammunition by air marshals outside an aircraft is prohibited;
- (3) with reference to Article 27(3), that the application of this provision does not affect the powers of the judicial authorities.
- III. The Kingdom of Spain declares, with reference to the first sentence in Article 45, that in its view the "Agreed arrangements relating to Gibraltar authorities in the context of EU and EC instruments and related treaties" of 19 April 2000 are applicable to the Convention, as stipulated in paragraph 5 of those arrangements.
- IV. The French Republic declares, with reference to Article 9, that access to the national fingerprint identification system (FAED), as referred to in Article 9, is allowed, under current national law, in order to assist the competent authorities in tracing and identifying offenders in connection with crimes or other offences and preparations for them and in prosecuting punishable offences.
- V. The Kingdom of the Netherlands declares, with reference to Articles 3 and 4, that the Netherlands assumes that the procedure followed for these two articles will be the same, in that Contracting Parties will have access to reference data from the Netherlands' DNA analysis files, as referred to in Article 2(2) of the Convention, with the power to conduct

automated searches by comparing their DNA profiles with the DNA profiles in the Netherlands' DNA analysis files, regardless of whether or not this involves comparison in an individual case.

- VI. The Republic of Austria declares, with reference to Article 40(1), that judicial protection by the Austrian Data Protection Commission, satisfying both the requirements of Article 6(1) of the European Convention on Human Rights and the requirements for an independent supervisory authority under Article 28 of Directive 95/46/EC, meets the requirements of this provision.
- VII. The Federal Republic of Germany and the Republic of Austria declare, with reference to the second sentence in Article 46, that, in relations between them, costs incurred in providing legal assistance of the kind referred to in Article 7 will be reimbursed by the requested Contracting Party.

Prüm, this twenty-seventh day of May in the year two thousand and five

This joint declaration is being signed in a single copy in the German, Spanish, French and Dutch languages and deposited, with the Convention, in the archives of the Ministry of Foreign Affairs of the Federal Republic of Germany, which will send a certified copy of it to each signatory and acceding State.

For the Kingdom of Belgium

For the Federal Republic of Germany

For the Kingdom of Spain

For the French Republic

For the Grand Duchy of Luxembourg

For the Kingdom of the Netherlands

For the Republic of Austria

