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NOTE

From:	Presidency
To:	Delegations
Subject:	Draft Council Conclusions on the way forward in view of the creation of an European Forensic Science Area

Background

On 13 and 14 December 2011, the Council approved conclusions¹ on the vision for European Forensic Science 2020 including the creation of a European Forensic Science Area and the development of forensic science infrastructure in Europe. Their aim was to foster cooperation between police and judicial authorities across the European Union with a view to creating a European Forensic Science Area by 2020. Member States and the Commission were therefore called upon to work together to make progress on several areas, aiming to ensure a consistent and efficient administration of justice and the security of citizens.

¹ 17537/11 ENFOPOL 413 COPEN 342

The importance of forensics was highlighted once again in the Commission's Communication on the European Agenda on Security²: *"(...) forensic science is critical to law enforcement and prosecution. **Law enforcement and judicial authorities must be confident that the forensic data they rely on is of high quality, including if the data comes from another Member State. It is therefore important to ensure that the forensic data exchanged through information exchange systems, such as the Prüm framework for fingerprints and DNA profiles, can be effectively used in court. A European Forensic Area, to align the processes of forensic service providers in Member States, would foster cooperation and ensure confidence.**"*

The Netherlands announced that this topic would be a priority on the agenda of its Presidency, with Council Conclusions and an Action Plan aiming to move things forward in this area to be presented for adoption. In this regard, a stocktaking exercise involving a questionnaire³ sent to Member States and an analysis of the replies received⁴ took place in the LEWP during the Luxembourg Presidency and a comprehensive state of play of the current situation was drafted. This represented the main basis of the Action Plan incorporated in the annexed draft Council Conclusions.

During the informal Ministerial meeting that took place in Amsterdam on 25 and 26 January 2016, ministers agreed that creating a European Forensic Science Area continues to be an important goal to be reached by 2020.

² COM(2015) 185 final

³ CM 3080/15

⁴ 15051/15

Scope

The Action Plan follows the orientation given by the Council Conclusions in 2011 focusing on actions related to "traditional" forensics⁵ and the topics discussed during the Informal JHA Ministerial meeting of 26 January 2016. It can therefore also contain topics and actions that cover 'non traditional' forensics like digital forensics - a very wide area that is relevant inter alia for the fight against cybercrime and terrorism, but also for many other forms of crime that leave digital traces. Such actions however, should be dealt with in cooperation with other working parties dealing with the overall policy on those topics. For any of these, the knowledge and expertise of relevant stakeholders in the area should be taken into consideration.

Methodology, implementation and monitoring

The implementation of the actions will take utmost account of the existing framework and instruments:

- Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities and its current state of play⁶;
- the structures for information and data exchange: Prüm Decisions, SIENA, eu-LISA.

The European Network for Forensics Science Institutes (ENFSI)⁷ will play a prominent role in the implementation of several of the actions foreseen as it has the required expertise, capacity and impact.

⁵ Forensics should be understood as encompassing different fields of science, including anthropology, biology, chemistry, engineering, genetics, phonetics and toxicology. It includes activities like scientific collection and analysis of physical evidence in criminal cases, analysis of different types of materials, including blood, fibers, bullets and fingerprints etc.

⁶ OJ L 322, 9.12.2009, p. 14

⁷ www.enfsi.eu

Member States are encouraged to express their willingness to get involved in one or several of the actions. Together with the coordinator, a representative of the Presidency and of the Council Secretariat, the representatives of the Member States in question, would then be expected to ensure the necessary follow-up steps (for example planning of activities, schedule, financing if relevant) and, where necessary and appropriate, inform the LEWP of the state of play. Coordination with other stakeholders (such as DAPIX, Eurojust, CEPOL, European Judicial Training Network (EJTN), etc.) should be sought as necessary. The participation in the implementation of the current Action Plan should remain voluntary.

The approach of the Action Plan is a qualitative one: its actions aim at fostering mutual trust between stakeholders in the field of forensics, by enhancing the quality of forensic products and services and the competence of forensic personnel. The proposed way forward does not refer to legally binding instruments but to a "softer" approach aiming mainly towards alignment through exchange of good practices and awareness raising.

This revised version incorporates the changes agreed during the LEWP meeting on 26 April and it will be put for adoption through silence procedure. The changes are marked in underline.

**Draft Council Conclusions on the way forward in view of the creation of an European
Forensic Science Area**

THE COUNCIL OF THE EUROPEAN UNION,

HAVING REGARD to the value of the cross-border exchange of DNA-profiles, fingerprinting data and vehicle registration data under the Prüm Decisions 2008/615/JHA and 2008/616/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime,

TAKING INTO ACCOUNT the Council Framework Decision 2009/905/JHA of 30 November 2009 on the accreditation of forensic service providers carrying out laboratory activities concerning DNA and fingerprints,

RECALLING THAT in December 2011 the Council approved conclusions regarding the realisation of a European Forensic Science Area by 2020, “where routine forensic processes for the collection, processing, use and delivery of forensic data should be based on equivalent minimum forensic science standards and where forensic service providers should work on the basis of a common approach to implementation of these standards that fosters closer cooperation between them and the criminal justice systems”,

TAKING INTO ACCOUNT that the Council Conclusions of 16 June 2015 on the Renewed European Union Internal Security Strategy and the European Agenda on Security consider forensic science critical to law enforcement and prosecution,

NOTING THAT forensic evidence is increasingly important in criminal matters and that law enforcement and judicial authorities must be confident that the forensic data they rely on is of high quality, irrespective of the jurisdiction under which the evidence was produced or processed,

BEARING IN MIND the objective of the European Union of maintaining and developing the Union as an area of freedom, security and justice, whereby a high level of security is to be provided by common action between the Member States in the field of police and judicial cooperation in criminal matters,

NOTING THAT a European Forensic Science Area would foster cooperation and provide confidence through alignment of procedures and practices of forensic service providers in Member States as mentioned in the Renewed European Union Internal Security Strategy,

RECALLING THAT the Union constitutes an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States, and that practices will necessarily vary between Member States,

REAFFIRMING the need to ensure the effective and appropriate exchange of scientific evidence and the increased need to use of forensic data from one Member State in the judicial processes of another,

RECOGNISING the wish expressed by the Member States during the discussion at the Informal JHA Ministerial meeting of 26 January 2016 in Amsterdam to expand the exchange of information from forensic databases, in particular in the fields of weapons and ammunition, explosives and drugs,

NOTING that additional funding by the Commission is a crucial prerequisite for enhancing the European forensic science area and the implementation of the measures in the annexed action plan,

NOTING the contribution in the development of forensic sciences of the Commission's research programmes (Framework Programme 7 for the years 2007-2013 and Horizon 2020 for the years 2014-2020) and Internal Security Funds,

RECOGNISING the important role of the European Network of Forensic Science Institutes (ENFSI) as a platform for efficient forensic knowledge exchange, as well as other stakeholders and forensic science service providers, with a view to developing minimum quality requirements for forensic examinations, facilitating international collaboration and identifying important systemic needs for the forensic community,

RECOGNISING THAT CEPOL is the EU agency responsible for the training of law enforcement officers across Europe,

THE COUNCIL OF THE EUROPEAN UNION AND THE MEMBER STATES MEETING
WITHIN THE COUNCIL,

CONSIDER it necessary to endorse the annexed action plan for the way forward with regard to the creation of a European Forensic Science Area,

INVITE the Law Enforcement Working Party and other relevant working parties to provide a midterm progress report of the implementation of the Action Plan in the first half of 2018 and inform COSI about the results.

ACTION PLAN FOR THE WAY FORWARD FOR THE CREATION OF AN EUROPEAN FORENSIC AREA

1. 'Best Practice Manuals'⁸ for forensic disciplines'

Reference:	1
Objective:	Improving mutual trust by encouraging continuous quality improvement of forensic procedures and processes through the development and use of Best Practice Manuals for forensic analyses.
Rationale:	Use of Best Practice Manuals covering a wide spectrum of forensic disciplines – "traditional" forensics as well as digital forensics – by forensic service providers in Europe will lead to more alignment of procedures and enhancement of the quality of forensic services available to law enforcement and justice across Europe. This will lead to increased trust between Member States and streamlined exchange of forensic evidence.

This action is designed to stimulate the development and use of Best Practice Manuals for all forensic disciplines, foster keeping Best Practice Manuals up to date, improve identification of best practices and sharing of Best Practice Manuals and increase the use of Best Practice Manuals by forensic service providers throughout Europe.

Use of Best Practice Manuals for forensic science investigations already developed by ENFSI (European Network of Forensic Science Institutes), for example within the project 'Towards European Forensic Standardisation through Best Practice Manuals', supported by the Prevention of and Fight against Crime Programme of the European Commission – Directorate General Home Affairs⁹ will be stimulated.

ENFSI is encouraged to share its Best Practice Manuals with all European forensic service providers, including non-members. The Commission is encouraged to support ENFSI to keep already developed Best Practice Manuals up-to-date and develop Best Practice Manuals for other forensic disciplines as needed.

The national accreditation bodies are encouraged to take ENFSI Best Practice Manuals or other Best Practice Manuals recognised by the forensic community into consideration when carrying out accreditation of processes of forensic service providers. This will stimulate their use.

Cooperation with the European Committee for Standardization (CEN) can be sought, in particular the CEN/TC 419 project committee working on Forensic Science Processes.

⁸ The term BPM is used to reflect the scientifically accepted practices at the time of creation. The term BPM does not imply that the practices laid out in this manual are the only good practices used in the forensic field. As the term BPM has also been used in the Council Conclusions of 2011 on the European Forensic Science Area, the term BPM has been maintained for reasons of continuity and recognition.

⁹ HOME/2012/ISED/MO/4000004278.

Outcome:	Use of Best Practice Manuals will lead to alignment of forensic procedures and increased trust between Member States exchanging forensic data.
Activities and responsible actors:	1. Commission in cooperation with ENFSI and other relevant stakeholders is invited to start a stock taking exercise on the available Best Practice Manuals in different forensic science areas, the updates needed and the gaps that still exist (COM, ENFSI). 2. Commission is invited to stimulate the development of BPMs by subsidising activities (COM). 3. ENFSI is invited to implement the Council Conclusions of 2011 by: a) Sharing of existing Best Practice Manuals (BPMs) for different forensic science areas with non-ENFSI members, for example via publication on publicly available websites; b) Developing new BPMs and updating existing BPMs, including BPMs for crime scene investigation; c) Stimulating the use of BPMs by forensic service providers (Member States and ENFSI); d) Translating BPMs in all EU languages to enhance their impact and stimulate their use (Member States assisted by ENFSI); 4. The national accreditation bodies are encouraged to take ENFSI Best Practice Manuals or other Best Practice Manuals recognised by the forensic community into consideration when carrying out accreditation of processes of forensic service providers (National accreditation bodies, European co-operation for Accreditation).
Other policy areas/groups:	Coordination with national accreditation bodies, the European co-operation for Accreditation (EA), CEN/TC 419, and with the Commission should be sought.
Coordinator(s):	ENFSI
Planning:	Activity 1 finished before the end of 2016. Activities 2 and 3 are continuous.

2. ‘Stimulating exchange of forensic information from databases, for example in the areas of weapons and ammunition, explosives and drugs’

Reference:	2
Objective:	Stimulate the exchange of forensic information from databases similar to the methodology used under the Prüm Decisions 2008/615/JHA and 2008/616/JHA, focussing on the areas of weapons and ammunition, explosives and drugs.
Rationale:	During the informal JHA Council of 26 January 2016, the Member States stated their wish to expand the exchange of forensic information from national forensic databases similar to that undertaken under the Prüm Decisions, for example in the fields of weapons and ammunition, explosives and drugs. In addition, as facial recognition algorithms become more mature, the need arises to discuss in a proper forum the possibility of forensic facial databases similar to DNA and fingerprints, as a complementary biometrical identification parameter. Enhanced exchange of forensic information in these fields will contribute to combatting organised crime and terrorism. ENFSI is currently working on the project: ‘Towards the Development of Pan-European Databases in Forensic Science, supported by the European Commission – Directorate General Home Affairs (code: HOME/2014/ISPP/AG/ENFSI/4000007822). ENFSI, the Member States, Europol and the Commission need to work together to safeguard the continuation of the outcomes of this project, such as newly developed databases or newly linked national databases containing for example necessary background information for delivering sound and reliable forensic expert opinions or containing forensic evidence. In addition, the outcomes of the EFFECT project (Examinations of Firearms and Forensics in Europe and across Territories) should be taken into account. Coordination with other similar projects, for example the FP7 project ODYSSEY (Strategic Pan-European Ballistics Intelligence Platform for Combating Organised Crime and Terrorism) and the RESPONSE project (Collect, Analyse, Organize, Evaluate, Share – A Response to Challenges in Forensic Drugs Analyses) and EMPACT should be sought. Using the outcomes of projects such as mentioned above, exchange of forensic information can be enhanced, starting with knowledge data and eventually evidence.
Outcome:	Increased exchange of forensic data between Member States which will aid in combatting cross-border crime and terrorism
Activities and responsible actors:	1. Member States are invited to review the legal possibilities and strategic opportunities for expanding the exchange of information in different areas nationally and on the EU level (Member States); 2. Member States are urged to make full use of potential to exchange forensic data (Member States); 3. Europol is invited to map possibilities to exchange forensic information, which COSI will consider (Europol); 4. Coordination with the relevant actions under the Operational Action Plan (OAP) Firearms and OAP Drugs (synthetic drugs, cocaine and heroin), under the umbrella of EMPACT, should be sought (Europol, Member States);

5. Evaluate (preliminary) outcomes of different projects such as 'Towards the Development of Pan-European Databases in Forensic Science', EFFECT, ODYSSEY and RESPONSE and use as input to develop appropriate strategy to enhance exchange of forensic evidence (ENFSI, MS, Europol, COM);
6. Develop new research projects using H2020 funding instruments to prepare the future in this area (to be defined);
7. Member States are invited to review if there are similar national databases for forensic exchanges and which kind of forensic data is suitable for such online exchange and foster interoperability of already existing databases/examination systems similar to the methodology used under the Prüm Decisions (ENFSI in cooperation with the Member States);
8. Forensic data types which are not processed in common comparable databases should be also defined by experts of Member States in order to accomplish and develop common alignment/standardisation of data description; this would allow Member States to request forensic comparisons for such examination systems in cases of great importance (Member States);
9. The possibilities of forensic facial databases similar to DNA and fingerprints should be discussed, as a complementary biometrical identification parameter (Member States, in coordination with ENFSI).

Other policy areas/ groups:	Coordination with DAPIX, GENVAL, Europol and COSI should be sought.
Coordinator(s):	ENFSI in cooperation with Member States
Planning:	Start in the second half of 2016 with review and mapping activities. First action plan for the exchange of information via a (linked or central) database in 2017.

3. 'Proficiency tests and collaborative exercises for forensic disciplines'

Reference:	3
Objective:	Improving mutual trust by increased use of proficiency tests and collaborative exercises by forensic service providers.
Rationale:	Proficiency tests and collaborative exercises are important for testing procedures as well as maintaining competence of forensic practitioners. Participation in these tests is a measure of the quality of the examinations performed and provides transparency and feedback on performance. Enhanced use of proficiency tests will therefore lead to improved quality of forensic providers and will enhance trust between Member States exchanging forensic data. Not in all forensic disciplines proficiency tests are available. Development of these tests should be encouraged and supported. In addition, use of these tests by as many forensic service providers as possible should be encouraged and supported.
Outcome:	Enhanced use of proficiency tests and collaborative exercises by forensic service providers will lead to increased trust in forensic science data generated in different Member States.
Activities and responsible actors:	1. Making a list of forensic proficiency test providers and identifying the areas of expertise (including crime scene investigation and digital evidence) in which no proficiency tests are available or in which proficiency tests of improved quality are needed (ENFSI); 2. Evaluate the proficiency tests available via different providers and make a list of recommended tests that can be chosen from by forensic service providers (ENFSI); 3. Determine which additional proficiency tests need to be developed (Member States and ENFSI); 4. Develop additional proficiency tests with support of Commission (different providers, ENFSI, COM); 5. Examine how many proficiency tests ENFSI can operate per year in compliance with competency of its working groups (ENFSI); 6. Member States are committed to stimulate their forensic service providers to engage in the proficiency tests operated by ENFSI or recommended by ENFSI (Member States, ENFSI); 7. The Commission is invited to subsidise above activities (COM), for instance by developing new research& innovation actions using H2020 funding instruments to prepare the future in this area.
Other policy areas/ groups:	Coordination with Member States, different providers of proficiency tests and the Commission should be sought.
Coordinator(s):	ENFSI
Planning:	Activities 1, 2, 3, 5 and 7 finished by the first half of 2017. Activities 4 and 6 are continuous.

4. 'Forensic awareness and training for law enforcement and justice communities'

Reference:	4
Objective:	Improving forensic awareness among law enforcement and justice communities
Rationale:	Improving forensic awareness among law enforcement and justice communities will foster better understanding and confidence in forensic service providers. By making the law enforcement and justice communities more knowledgeable of the (general) possibilities and limitations of forensic science, as well as of the current developments, they will be able to understand and critically scrutinise forensic evidence. This action is intended to stimulate the development and use of forensic awareness courses for police, forensic experts, members of emergency services, prosecutors and judges. These courses should be intended to raise general forensic awareness, but also need to be tailored for specific forensic disciplines, for example digital forensics or forensic DNA analysis. Learning can take place via traditionally given courses, as well as via e-learning, apps, webinars etc. Coordination with existing initiatives should be sought.
Outcome:	The level of forensic awareness among prosecutors, police and judges will be raised, which will ensure that forensic evidence is better understood when used in court.
Activities and responsible actors:	1. To liaise with various law enforcement and justice system entities in order to identify priority areas for forensic awareness training (MS, CEPOL, EJTN). 2. Create a mapping of existing training materials on forensics aimed for the use of law enforcement stakeholders and the judiciary (CEPOL and Member States in cooperation with the Commission and/or the European Cybercrime Education and Training Group (ECTEG)). 3. Identify synergies with the European Judicial Network in Criminal Matters for making available trainings and awareness raising materials in this area (EJN and COM). 4. Provide EU funding for the development of forensic training programmes for the justice and law enforcement community where those are not yet available (COM). 5. Develop appropriate training in new technologies/methods used during crime scene investigation (MS in cooperation with CEPOL); 6. Develop a short course on forensic awareness for members of emergency services and other first responders, for example by e-learning (CEPOL and Member States in cooperation with ENFSI); 7. Development and implementation of training programmes on forensic awareness, for example by e-learning (CEPOL and Member States in cooperation with Commission); 8. CEPOL to organise training seminars on forensic collection of evidence (CEPOL); 9. Europol to create a webpage on their website to facilitate the exchange of forensic information/make it possible for EPE - European Platform for Experts to be used (Europol). 10. Implementation of trainings for judges and prosecutors on the use of forensic science developments in legal proceedings and pre-trial proceedings (new areas of research, new equipment, better interpretation of results, standardisation of research methods) (EJTN in cooperation with ENFSI and COM);

Other policy areas/ groups:	Coordination with CEPOL, European Judicial Training Network (EJTN), European Judicial Network (EJN), Eurojust, Europol, ENFSI, other forensic institutes, Member States and the Commission should be sought.
Coordinator(s):	CEPOL, EJTN
Planning:	Activities 1, 2, 3 and 4 finished by the first half of 2017. Activities 5, 6, 7, 8 and 10 are continuous, activity 9 finished before 2018.

5. 'Stimulate accreditation of forensic service providers and competence of forensic personnel on a voluntary basis'

Reference:	5
Objective:	Stimulate accreditation of forensic procedures and competence of forensic personnel by forensic service providers on a voluntary basis.
Rationale:	Accreditation of forensic procedures performed by forensic service providers makes exchange of forensic evidence easier as it will enhance trust in the quality of forensic procedures and consequently in the forensic results obtained in different Member States. In their replies to the questionnaire on the European Forensic Science Area, as contained in the overview document (15051/15), a large majority of respondents stated that accreditation of forensic service providers, is very important. The achievement of accreditation is a gradual process that requires great care and resources – personnel resources as well as financial resources. Due to the limitation of resources, however, forensic service providers are under great pressure to not only maintain a high-quality service, but also to meet formal quality assurance requirements. It is however important to continue to strongly encourage accreditation of forensic procedures. An action plan should be developed by the Commission to stimulate accreditation of forensic procedures on a voluntary basis, focusing on those areas which produce data that can be potentially exchanged at international level, such as weapons and ammunition, explosives and drugs, which were highlighted as priorities by the informal JHA ministerial meeting of 26 January 2016. Beyond "traditional" forensics, recent events have highlighted the urgent need for a swift exchange of reliable digital forensic data that can be used as evidence in court beyond the jurisdiction of the Member State of origin. Therefore, accreditation of forensic procedures should also be pursued as a matter of priority in this area. The action plan will aim to eliminate hurdles and to support forensic science institutes that seek accreditation of their procedures. The Commission is invited to provide resources to stimulate accreditation. Respect for minimum competence criteria for forensic science personnel, viewed as very important by a large majority of respondents to the questionnaire, is partially inherent to the accreditation processes. Again, the most important hurdle mentioned is budget. An action plan should be developed by the Commission on how to make progress on a voluntary basis in competence assurance and training for forensic personnel. Cooperation with ENFSI can be sought in this respect. Coordination with existing initiatives to enhance competencies of forensic personnel should be sought - <i>e.g.</i> the Hercule III Programme, aimed at fighting fraud, corruption and other irregularities, includes possibilities for training in the field of digital forensics.
Outcome:	Develop an action plan to stimulate accreditation of forensic procedures on a voluntary basis, focused on the areas of weapons and ammunition, explosives, drugs and digital forensics as well as stimulate voluntary accreditation for unified standards on gathering evidence from a crime scene (COM); In addition, develop an action plan to stimulate competence assurance for forensic personnel and scene of crime officers on a voluntary basis (COM).

Activities and responsible actors:	The Commission is invited to develop above mentioned action plans.
Other policy areas/groups:	Coordination with Member States, ENFSI, forensic service providers, national accreditation boards, the European cooperation for Accreditation (EA) and the Commission should be sought.
Coordinator(s):	Commission
Planning:	The first action plan on one of the two outcomes should be finished by 2018, the second by 2020.

6. ‘Stimulating exchange of forensic data via Prüm and improving its quality’

Reference:	6
Objective:	Stimulating full implementation of the Prüm Decisions 2008/615/JHA and 2008/616/JHA to exchange DNA-profiles and fingerprints. In addition, improving the quality of forensic data exchanged between all Member States under the Prüm Decisions.
Rationale:	The exchange of DNA profiles and fingerprints in the EU by linking databases under the Prüm Decisions 2008/615/JHA and 2008/616/JHA of 23 June 2008 has been very successful although the Decisions have not been fully implemented in and between all Member States. In addition, there is room for improvement in terms of quality of exchanged data. Implementation and exchange of forensic data between Member States will contribute to combatting cross-border crime.
Outcome:	Further implementation of the Prüm Decisions and improved quality of forensic data, which will contribute to better combatting cross-border crime.
Activities and responsible actors:	1. Monitoring of the implementation of the Prüm Decisions (DAPIX); 2. Monitoring Prüm implementation and daily application – obstacles (DAPIX); 3. Analysis of possibilities to reduce the number of false positive matches with DNA-profiles (DAPIX); 4. Exchange of experience in the implementation and ongoing operation of communication between the systems of EU MS, in particular mutual assistance in solving the problems that arise not only during implementation, but also in the current work (Member States in cooperation with DAPIX); 5. Development of mechanisms for the mutual prompt notification in the event of unavailability of the application (e.g. sudden technical problems, routine modifications to systems) (Member States in cooperation with DAPIX); 6. Search for new solutions / ideas to improve and streamline the exchange of DNA or fingerprint data between EU MS (DAPIX); 7. Analyse how to optimise Prüm follow-up procedures (DAPIX).
Other policy areas/groups:	Coordination with the Working Party on Information Exchange and Data Protection (DAPIX), Member States, and the Commission should be sought.
Coordinator(s):	The Presidency in cooperation with GCS and COM
Planning:	To be defined by DAPIX.