



JUSTICE

**Comments for the
House of Lords EU Sub-Committee F
on the conclusions of the meeting of the
G6 Interior Ministers at Heiligendamm
on 22-23 March 2006**

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Introduction

1. JUSTICE is an independent all-party law reform and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. It is the UK section of the International Commission of Jurists. JUSTICE has been strongly involved in monitoring the development of a European area of freedom, security and justice. It is part of a research network on the European Arrest Warrant, headed by the T.M.C. Asser Instituut in The Hague.
2. We are grateful for the opportunity to submit further comments on the conclusions of the meeting of the Interior Ministers of France, Germany, Italy, Poland, Spain and the UK at Heiligendamm on 22-23 March 2006. These comments will not explore in depth the Third and First Pillar instruments discussed or hinted at in the conclusions, but will rather address the relationship between the conclusions and the said instruments, with a focus on police co-operation in criminal matters.

Key observations

3. JUSTICE considers the Heiligendamm conclusions to add little in terms of specific measures to those measures and legal instruments currently negotiated in the EU Council or adopted by the signatories of the Prüm Convention.
4. We are concerned, however, that increased co-operation in police and immigration and asylum matters between the G6 countries may lead to yet another set of rules and measures adding to the plethora of police co-operation and information exchange measures currently negotiated in the Council or adopted by another group of EU member states in the Prüm Convention.
5. The concrete proposals for measures to be taken by the G6 states under the heading of 'Fighting terrorism' may have an impact on data exchange procedures between the law enforcement authorities involved. JUSTICE is adamant that these measures have to comply with strict data protection standards.
6. JUSTICE is alarmed at the ministers' statement that the implementation of the information exchange under the principle of availability must not depend on the adoption of the proposed Third Pillar data protection Framework Decision. Adoption and implementation of data exchange measures at EU level presupposes the

existence of an EU data protection instrument ensuring adequate standards for data protection in the course of information exchange under the Third Pillar.

The conclusions – a call for EU action

7. While the conclusions refer to 'specific measures' having been agreed on by the G6 interior ministers, the document itself actually contains only very few proposals for concrete action meriting this term. Moreover, the largest part of the conclusions consist of ministers' declarations of intent to press for the adoption of police co-operation and information exchange measures already discussed at EU level or agreed upon in the Prüm Convention.
8. The conclusions, appropriately, speak of the intention of the G6 'to provide an additional impetus to strengthening the area of freedom, security and justice'. In light of the apparent difficulties to reach agreement in the Council on the draft Council Decision of 18 July 2005 on the improvement of police cooperation between the member states of the European Union, especially at the internal borders and amending the Convention implementing the Schengen Agreement (COM(2005) 317 final) and on the draft Council Framework Decision on the exchange of information under the principle of availability of 12 October 2005 (COM(2005) 600 final), the G6 ministers' rallying call to swiftly reach a consensus on the said instruments is hardly surprising.
9. In a similar vein, the G6 ministers urge all EU member states to adapt existing procedures for police co-operation and information exchange to the model provided in the Prüm Convention. The ministers in effect press for an integration of the Prüm measures into the Schengen *acquis* prior to the initial three year 'trial period' envisaged by the signatories in art 1(3) of the convention. In respect of information exchange mechanisms, this convention, while more limited in scope, is not dissimilar from the provisions contained in the draft Framework Decision on information exchange under the availability principle (COM (2005) 490 final).
10. On the issue of access of law enforcement and other internal security agencies to the envisaged VIS database, the ministers in effect only reiterate calls for the adoption of the draft Council Decision concerning access for consultation of the Visa Information Systems (VIS) by the authorities of member states responsible for internal security

and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences of 24 November 2005.

11. The use of joint investigative teams, referred to in the G6 conclusions, is also not a novelty at EU level as it is provided for in art 13 of the Convention on mutual assistance in criminal matters between the members of the European Union of 29 May 2000 (which came into force on 23 August 2005) and, albeit limited to cases of terrorism, in the Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences. A protocol to the Europol Convention introducing joint investigative teams is yet to enter into force. Other forms of operational police co-operation hinted at by the G6 ministers is contained in a draft Council Decision on the improvement of police cooperation between the member states of the European Union, especially at the internal borders and amending the Convention implementing the Schengen Agreement, which is currently negotiated – apparently rather half-heartedly - in the Council. A greater role of Frontex which the G6 ministers are advocating (eg by drawing up of joint situation reports with Europol), is already provided for in arts 2, 3 and 13 of the Frontex Council Regulation (EC) 2007/2004 of 26 October 2004.

Another set of law enforcement and security co-operation measures?

12. As is readily apparent from the above comments, co-operation between law enforcement and internal security agencies in asylum, immigration and criminal matters is the subject to a plethora of Third and First Pillar instruments (already adopted or currently being negotiated), the Europol Convention and, applicable to the signatory member states, the Prüm Convention.
13. While some of these instruments contain largely similar provisions, particularly in the field of information exchange, they are likely to cause confusion and unnecessary overlaps. With two separate sets of police co-operation instruments in place (*viz* the Third Pillar instruments and the Prüm Convention), already leading to differences in the level and intensity of police co-operation between different groups of EU member states, adding yet a third category of measures agreed on by the G6 countries, may yet have the effect of fragmentising further police co-operation at EU level.

Proposals for fighting terrorism

14. The most concrete proposals for measures the G6 member states intend to take are set out under the heading 'Fighting terrorism'. While these measures can, as such, be cautiously welcomed, they will entail considerable information exchange between the services and authorities involved. This is especially the case in the process of both the contemplated drawing up of joint analyses of internet use by terrorist organisations and the systematic exchange of information on people expelled by G6 countries for preaching racial or religious hatred. These measures would arguably fall within the scope of the Prüm Convention and both the draft enhanced police co-operation Framework Decision and the availability Framework Decisions, were they in force and applicable to the G6 countries.
15. Prior to the adoption and implementation of a Third Pillar data protection Framework Decision, however, it is not ensured that such measures will be subject to adequate data protection standards under national law. Nor will the data protection rules of the Prüm Convention (which would cover most of the information exchange envisaged in the conclusions) apply to the non-signatory G6 countries (Italy, Poland and the UK).
16. It is therefore essential that a strong Third Pillar data protection Framework Decision is adopted and implemented as a matter of urgency to guarantee adequate data protection standards.

A cause for concern – data exchange without EU data protection?

17. A cause for grave concern is the remark in the G6 conclusions – merely *en passant* – that 'rapid implementation of the availability principle must not depend on the adoption of a Framework Decision on data protection in the Third Pillar'.
18. Doubtlessly, the European Commission considers the projects of the availability Framework Decision and a data protection Framework Decision to be inextricably linked. This is clear from the very wording of the availability Framework Decision and its manifold references to the data protection Framework Decision throughout its provisions. Time and again has the European Data Protection Supervisor, Mr Peter Hustinx, emphasised that there can be no enhanced data exchange mechanism between member states' law enforcement agencies in the absence of an EU

instrument laying down minimum data protection standards: in his most recent opinion of 28 February 2006 on the draft availability Framework Decision, he stated unequivocally that *'[a]ny legal instrument implementing the principle of availability should not be adopted without the prior adoption of essential guarantees on data protection included in the proposal for a framework decision on the protection of personal data.'*

19. This call has been repeated by the rapporteur of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs in her draft report on the proposal for a draft data protection Framework Decision of 6 March 2006, where Ms Roure described the adoption of the said Framework Decision as a *sine qua non* for establishing the availability principle.

20. JUSTICE wholeheartedly subscribes to this position and calls for an adoption and implementation of a data protection framework decision prior to the implementation of a availability Framework Decision. Both instruments can only sensibly be considered *in tandem*, as the width and breadth of the data access competencies of member states' law enforcement authorities has to reflect the level of safeguards and data protection standards applicable to that information exchange.

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