

Ms. Sophie in 't Veld,
Mr. Olivier Chastel,
Mr. Moritz Körner,
Ms. Maite Pagazaurtundúa,
Mr. Michal Šimečka,
Ms. Ramona Strugariu,
Members of the European Parliament

By email only

28 July 2020

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Dear Members of the European Parliament,

I would like to thank you on behalf of the European Data Protection Board (EDPB) for your questions relating to the possible expansion of the so called Prüm framework.

The EDPB took note of the media reports in this regard but has not been consulted, formally or informally, by the Council or the Commission on this matter. As there is no formal proposal presented to date, I am only in a position to share with you some preliminary elements of our analysis based on and limited to the information publicly available. The EDPB stands ready to provide further in-depth guidance, should a legislative proposal be envisioned.

It has to be stressed that the EU data protection framework has evolved significantly since the 2005 Prüm Treaty and its partial inclusion into the EU acquis with the so-called Prüm Council Decision (2008/615/JHA) and the so-called Swedish Initiative (2006/960/JHA). It is therefore essential that the Prüm framework undergoes a comprehensive and independent evaluation with regard to its compliance with the current data protection acquis, prior to any envisioned expansion or amendment. The EDPB remains available to advise the Commission in this regard. In that respect, the EDPB takes note of the Commission's intention (COM(2020) 262 final, 24.6.2020) to provide for the necessary alignment with the Law Enforcement Directive (Directive 2016/680) when it proposes a revised and modernized Prüm legal framework in 2021.

Whether the Prüm legal framework may be expanded to include retrospective facial recognition (i.e. not live facial recognition), in line with EU law, would also depend on the details of the possible expansion and data protection safeguards foreseen.

The addition of retrospective facial recognition for the purpose of identifying a person within the Prüm legal framework would require a dedicated legal basis under EU law. Furthermore, whether the Prüm legal framework may be expanded to include retrospective facial recognition must first be assessed through a thorough impact assessment, in order to ensure that the necessity and proportionality of such measure, and the essence of the fundamental right to data protection are respected.

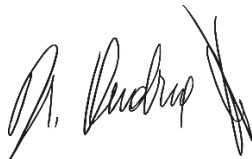
The EDPB indeed sees a great risk that Member States could disproportionately collect and process vast amount of facial recognition data, as the difference between DNA and fingerprint data on the one hand and facial recognition data on the other is, inter alia, that the latter data can be collected much more easily and also without the knowledge of the data subjects.

Concerning your question regarding the scope of the mandate of Europol and the cooperation with third countries, should an amendment in this regard be considered, the EDPB will of course take into account the views of the EDPS (as the supervisory authority of Europol) and the Europol Cooperation Board in order to assess whether the involvement of Europol would be in line with its mandate and EU law.

The EDPB furthermore considers any expansion of the Prüm legal framework with regard to the cooperation with third countries to require particular scrutiny. Transfers to third countries would have to be made strictly on the basis of legally binding instruments including appropriate guarantees, as provided for in the Chapter V LED.

Finally, I would also like to recall that the EDPB will prepare guidelines on the use of facial recognition technology by law enforcement authorities.

Yours sincerely,



Andrea Jelinek