

Surveillance in the EU

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Autonomous University of Barcelona

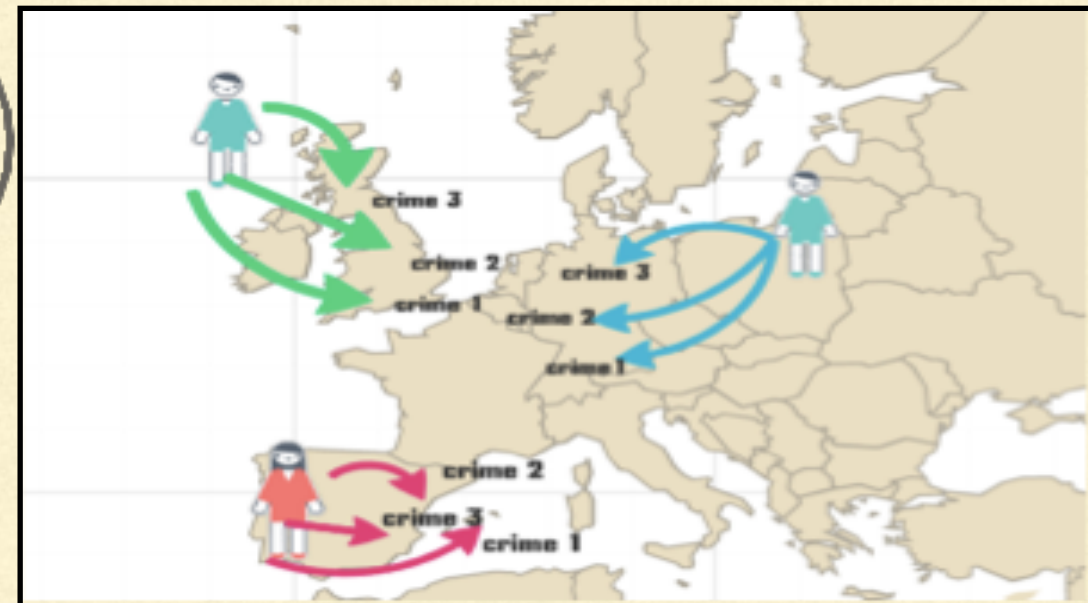
30 September 2019

9/11



External dimension of the AFSJ

Before



After



CTC



since 2007 a Belgian
official, Gilles de
Kerchove



[http://www.consilium.europa.eu/en/policies/
fight-against-terrorism/eu-strategy/](http://www.consilium.europa.eu/en/policies/fight-against-terrorism/eu-strategy/)

EXAMPLE



**Council of the
European Union**

**Brussels, 30 August 2019
(OR. en)**

11756/19

LIMITE

**CT 81
ENFOPOL 375
COTER 112
JAI 876**

NOTE

From:	EU Counter-Terrorism Coordinator
On:	30 August 2019
To:	Delegations
Subject:	Right-wing violent extremism and terrorism in the European Union: discussion paper


I. Introduction

Similarly to the need to address jihadist terrorism, which remains a priority, it is important to address right-wing violent extremism and terrorism. The EU CT and CVE framework applies to terrorism in all its forms, including right-wing violent extremism and terrorism. Given the specificities of right-wing violent extremism and terrorism, it should be discussed whether the

AFSJ Agencies

 **EUROPOL**

 **FRONTEX**

 **ENISA**

 **EUROJUST**

 **enisa**
European Network
and Information
Security Agency

 **CEPOL**
European Police College

 **FRA**
EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

 **EASO**

SIENA

SIENA V2.0

SIENA version 2.0 detailed design and development started on 1 March 2010 and it was deployed on 22 October 2010.

EUROPOL SIENA Information Exchange - Austria

Messages | Cases | Statistics | Search | Help

Messages

View: [icon] Number of items: [icon] Export to Excel

Drag a column header and drop it here to group by that column

Message type	ID	Subject	Origin	From	To	Date	Read	Assigned
Initial information	1229441-1-1	ss	Budapest, C.	IT	BE, BG, CZ	20100919	10	
Cancellation	1229445-1-2	subject		DE	AT	20100919	10	
Request	1229445-1-1	subject		DE	AT	20100919	10	
Cancellation	1229457-1-2	subject		DE	AT	20100919	10	
Request	1229458-1-1	subject	Budapest, C.	IT		20100919	10	
Request	1229475-1-1	subject		DE	AT	20100919	10	

Functionality delivered:

- Extension to Member States' designated competent authorities
- Access for Third Parties with Operation Agreement
- Implementation of Article 10(4) of ECD (Operational Centre use case)

JUDICIAL COUNTER-TERRORISM REGISTER

- <http://www.eurojust.europa.eu/press/PressReleases/Pages/2019/2019-09-05.aspx>

EU data-sharing instruments for law enforcement purposes

Swedish
initiative

Prüm

MLATs

ECRIS

EIO

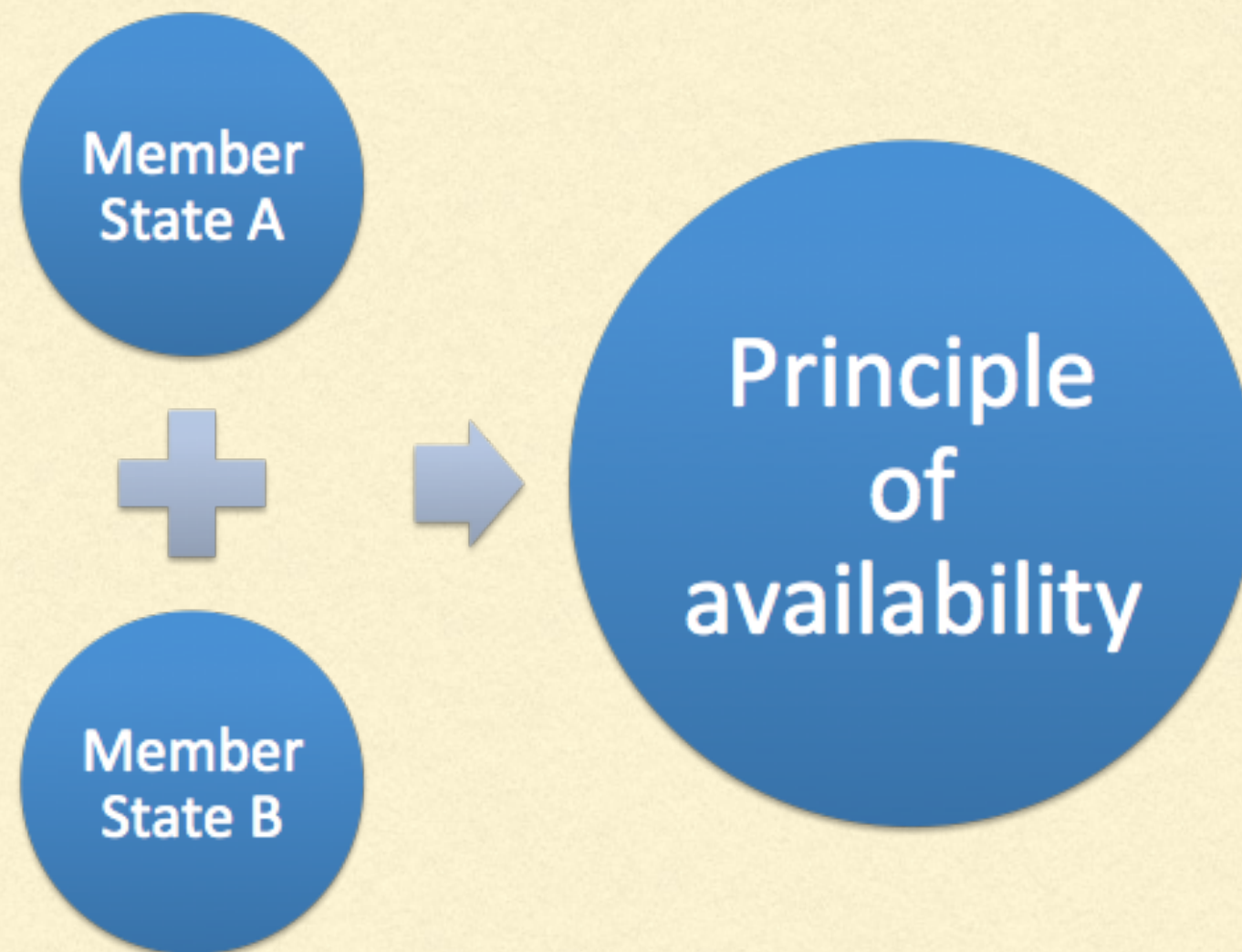
MLATs

MLA
Convention
1959

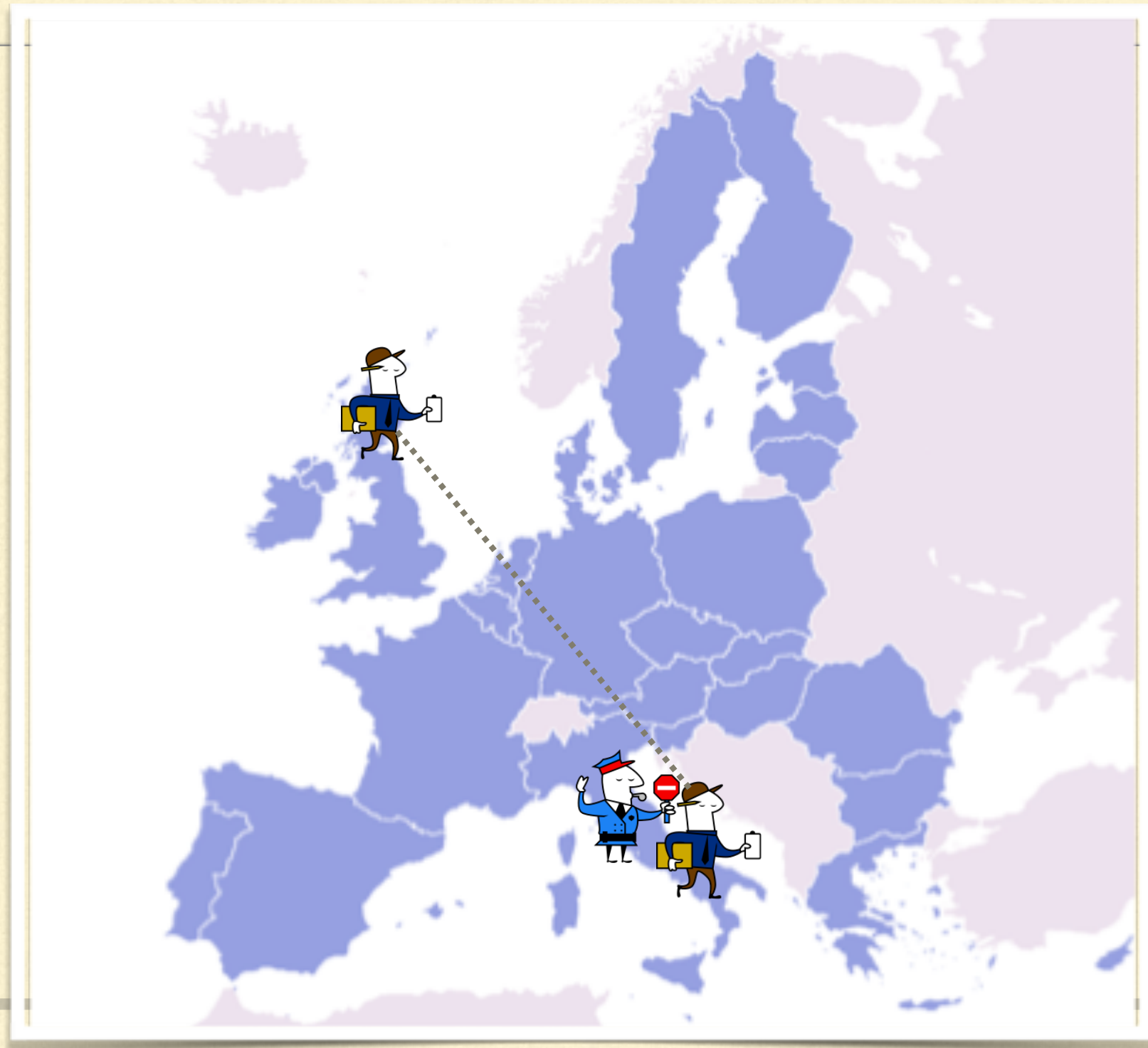


EU MLA
Convention
2000

Swedish initiative



European Criminal Records Information System



European Criminal Records Information System (ECRIS)

Exchange of information on criminal convictions

ECRIS is a decentralised electronic system to exchange criminal record information between EU Member States. The system provides judges, prosecutors and other relevant authorities with easy access to comprehensive information on an individual's criminal history, no matter in which Member State that person has been convicted in the past. Member States sent around 364,751 requests through ECRIS in 2016.

Participating countries

28 EU Member States



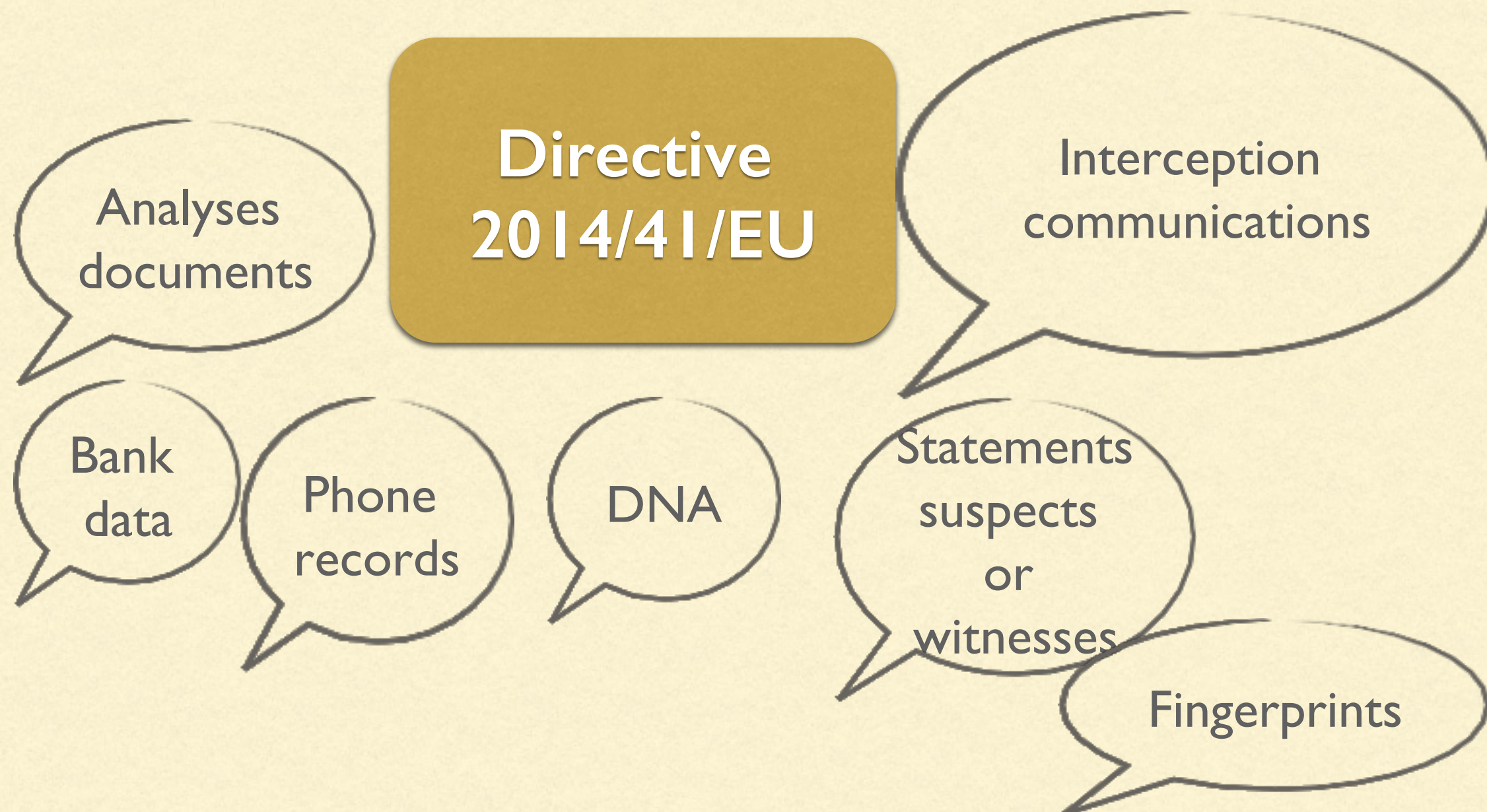
To whom does it apply?

All persons convicted in the EU and whose conviction appears in national criminal records registers.

Proposed improvements

Two new instruments were proposed in 2016 and 2017 to create the ECRIS-Third Country National system, which will make ECRIS more efficient when it comes to the exchange of criminal records information about non-EU nationals.

European Investigation Order



Shortcomings in the implementation and use



European information systems created for border management purposes

SIS/ SIS II

VIS

Eurodac

CIS

Schengen Information System (SIS)

EU-wide database for controls at external Schengen borders, and law enforcement and judicial cooperation

SIS is an EU-wide, large-scale information system that stores alerts and provides information on certain categories of wanted or missing persons or objects. The system also includes instructions to police officers or border guards on the specific action to be taken when a person or object is located, for example to arrest a person, to protect a vulnerable missing person or to seize an object, such as an invalid passport or stolen car. Consulted 3.9 billion times in 2016, SIS is the most widely used information-sharing system for border management and security in Europe.

Participating countries

26 EU Member States



4 Schengen Associated Countries



Switzerland



Norway



Iceland



Liechtenstein

To whom does it apply?

EU and
non-EU
nationals



Proposed improvements

A revision of SIS was proposed on 21 December 2016 to bring about important technical and operational improvements to the system, creating new alert categories and ensuring even more efficient information exchange between Member States and with EU Agencies such as Europol, Eurojust and the European Border and Coast Guard Agency.

Visa Information System (VIS)

Exchange of information on EU visas between Schengen Members

VIS connects consulates in non-EU countries and all external border crossing points of Schengen States. It collects data and decisions relating to applications for short-stay visas to visit or transit through the Schengen Area. VIS is one of the most advanced systems of its kind, with over 50 million visa applications and 37.5 million fingerprint sets registered as of November 2017.

Participating countries

22 EU Member States



4 Schengen Associated Countries



Switzerland



Norway



Iceland



Liechtenstein

To whom does it apply?

Non-EU
nationals
requiring
an EU visa



Upcoming improvements

A revision of VIS is planned for 2018 to improve its functionalities and to ensure its interoperability with the other EU large scale information systems.

Eurodac

EU asylum fingerprint database

Eurodac is a database with fingerprint data of asylum applicants and third-country nationals who have crossed the external borders irregularly or who are irregularly staying in a Member State.

Participating countries

28 EU Member States



4 Schengen Associated Countries



Switzerland



Norway



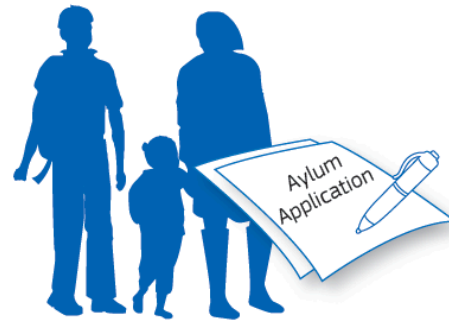
Iceland



Liechtenstein

To whom does it apply?

Non-EU nationals applying for asylum
in the EU



Proposed improvements

A revision of Eurodac was proposed on 4 May 2016 to expand the scope of the database to include irregular crossings and identification of illegally staying non-EU nationals.

EU data-sharing instruments created under the basis of the EU internal market clause



Passenger
data

Financial
data

Telecom
data

Maritime
cargo
data

SECTORAL INTERNATIONAL AGREEMENTS



PNR
Agreements

SWIFT
Agreement

PNR DATA

```
;;;;;;;;;;SK CP1LG
A-SCANDINAVIAN AIRLINES;SK 1175
B-TTP/ET/S2,3
C-7906/ 3205BSU-9876PISU-I-Z--
D-090709;090710;090710
G-X ;;CPHCPH;
H-011;0020CPH;COPENHAGEN ;IAD;WASHINGTON DULLES;SK 0925 K K 15SEP1220 1500
15SEP;OK01;HK01;HS;0;333;M;;2PC;3 ;;ET;0840 ;N;4074;DK;US;
H-012;0030IAD;WASHINGTON DULLES;CPH;COPENHAGEN ;SK 0926 K K 20SEP1715 0715
21SEP;OK01;HK01;HK;0;333;M;;2PC;;;ET;0800 ;N;4074;US;DK;3
K-FDKK2555 ;;;;;;;;;;DKK4562 ;;;
KFTF; DKK1564 YQ AC; DKK135 ZO AE; DKK30 YC AE; DKK87 US AP; DKK87 US AS;
DKK27 XA CO; DKK38 XY CR; DKK14 AY SE; DKK25 XF ;;;;;;;;;;
KN-FDKK2480 ;;;;;;;;;;DKK4487 ;;;
KNTF; DKK1564 YQ AC; DKK135 ZO AE; DKK30 YC AE; DKK87 US AP; DKK87 US AS;
DKK27 XA CO; DKK38 XY CR; DKK14 AY SE; DKK25 XF ;;;;;;;;;;
L-
M-KLDKECO ;KLDKECO
N-NUC240.79;240.79
O-15SEP15SEP;20SEP20SEP
Q-CPH SK WAS240.79SK CPH240.79NUC481.58END ROE5.305240XF IAD4.5;FXP
I-001;01BURKE/BENT MR;;APAGT SCHANNIE / SENIOR REJSER CPH - PHONE: +45 33938800//B: +45 7020 0305 /
KIRSTEN BRUUS//EMAIL/CONGRESS*CONGRESS-CONSULT.COM//FAX/70200315;;6F35D4
T-K117-9667478318
FERESTRICTIONS APPLY PER FARE COMPONENT;S2-3;P1
FM*C*0;S2-3;P1
FPNRDKK75+CHECK/DKK4487;S2-3;P1
FTNRCON;S2-3;P1
FVSK;S2-3;P1
FZA-BKBR
AMCONGRESS CONSULTANTS, MARTENSENS ALLE 8, 1828 FREDERIKSBERG C
TKTL13JUL/CPHS12319
RM AUTOINV, HFADT75, SELLFV, USERROBOT, CASENUM552171, AUTOPRINT
DM*(KUN-21030)
```


CATEGORIES OF DATA

NAME

FLIGHT DATES

ITINERARY

SEATS

BAGGAGE

CONTACT INFO

MEANS OF PAYMENT

PURPOSE

- **To prevent, detect, investigate and prosecute terrorism or serious crimes.**
-

WHEN ARE THE DATA SHARED?

2 Times

24-48h before takeoff

Right before takeoff, when all
passagers are onboard and
nobody can get on/off the plane

EU-CANADA PNR AGREEMENT (SIGNED IN 2014)

OPINION I/15 OF THE COURT

26 July 2017

The PNR agreement may not be concluded in its current form because several of its provisions are incompatible with the fundamental rights recognised by the EU

PNR data may reveal, inter alia, a complete travel itinerary, travel habits, relationships existing between two or more individuals, and information on the financial situation of air passengers, their dietary habits or their state of health, and may even provide sensitive information about those air passengers

Retained for up to five year:
Long period of time

+

PNR data transferred is intended to be analysed systematically by automated means, based on pre-established models and criteria, before the passengers' arrival in Canada. Such analyses may provide additional information on the private lives of passengers.

INTERNATIONAL AGREEMENTS

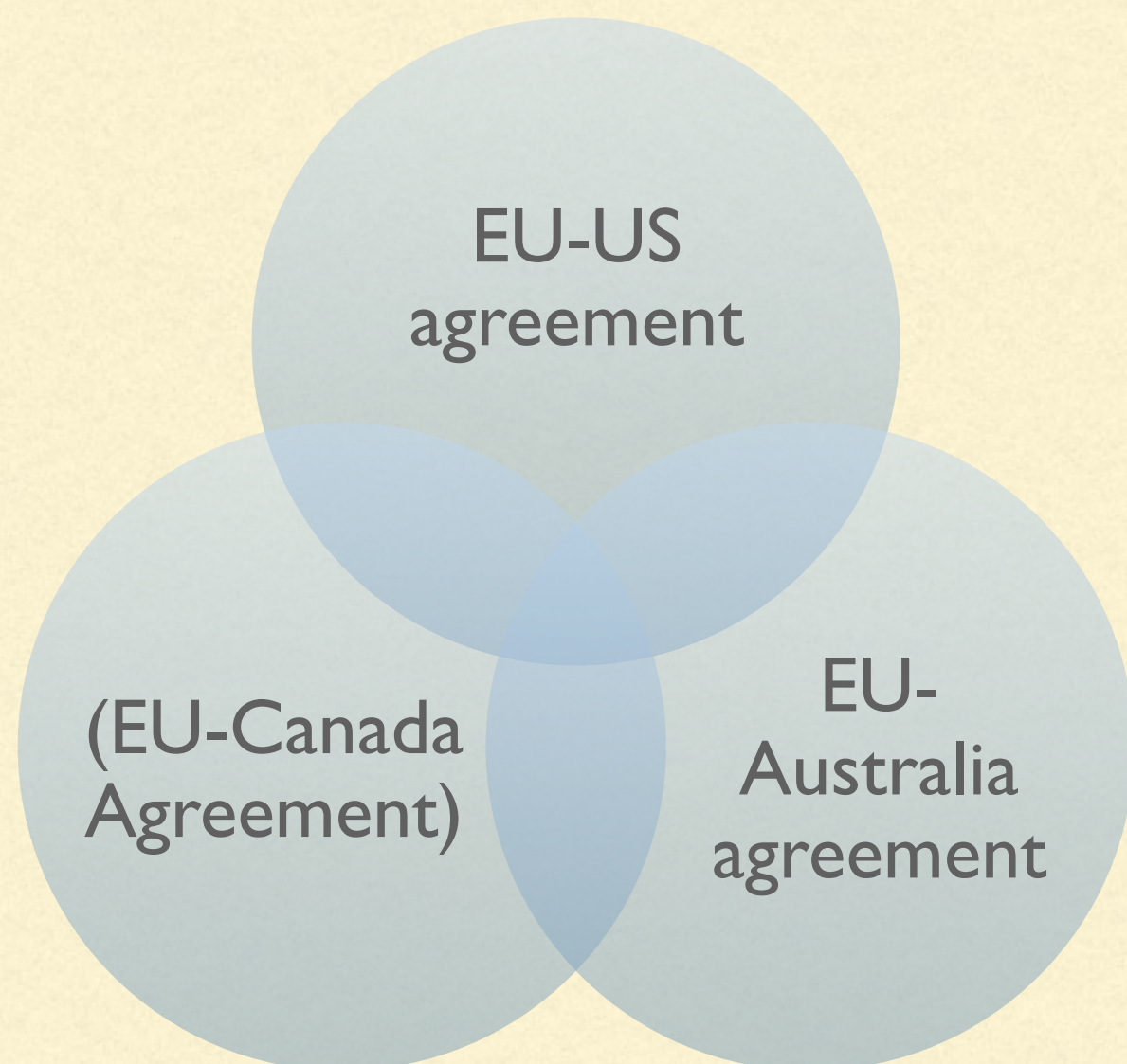
**EU-US
agreement**

**(EU-Canada
Agreement)**

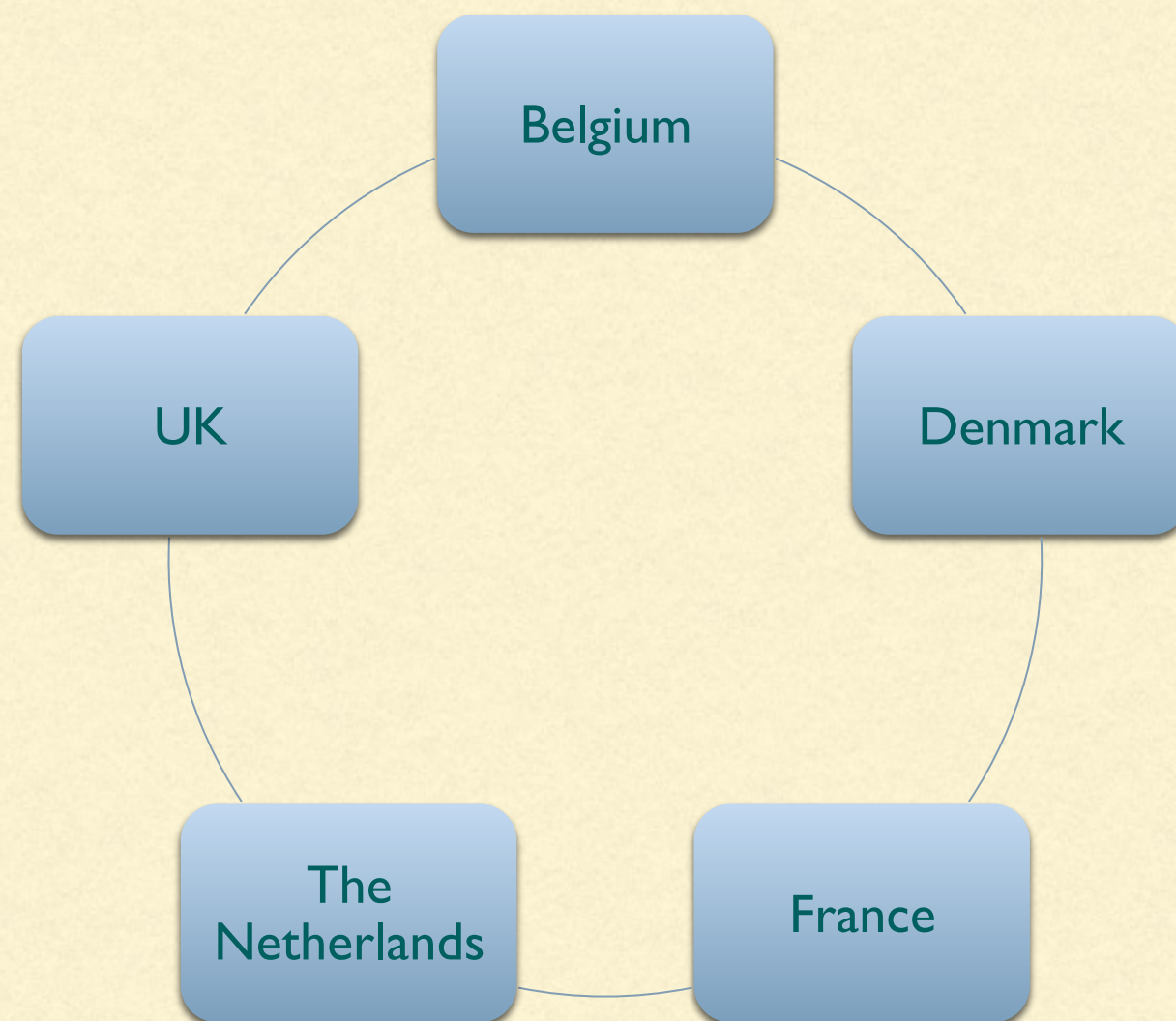
**EU-
Australia
agreement**

BEFORE 2016

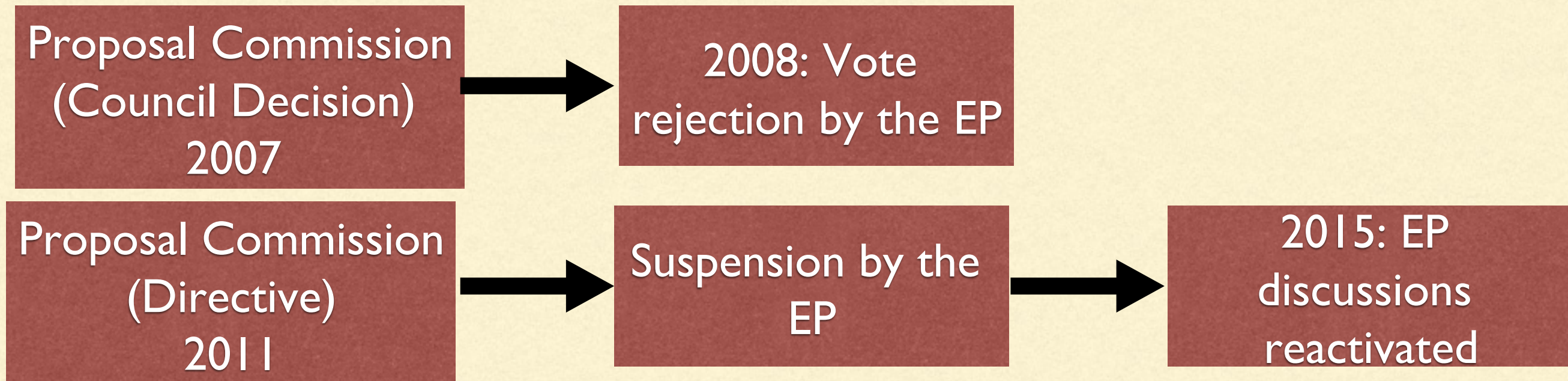
International agreements



PNR systems in MS



EU PNR DIRECTIVE



April 2016:
EU PNR Directive

FRAGMENTED DATA PROTECTION RULES

	Categories of data	Deletion sensitive data	Max. data retention periods
PNR EU-US	19	30 days	15 years
PNR EU-Australia	19	Automatically	5.5
PNR EU-Canada	19		

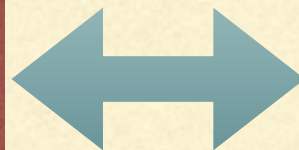
	Categories of data	Data access	Rights of data subject
EU PNR	Data retention 30 days / 5 years	PIUs	access, deletion, correction, blockage, judicial redress, compensation

DENMARK:
data retention
1 year

ICE:
data retention
5 years

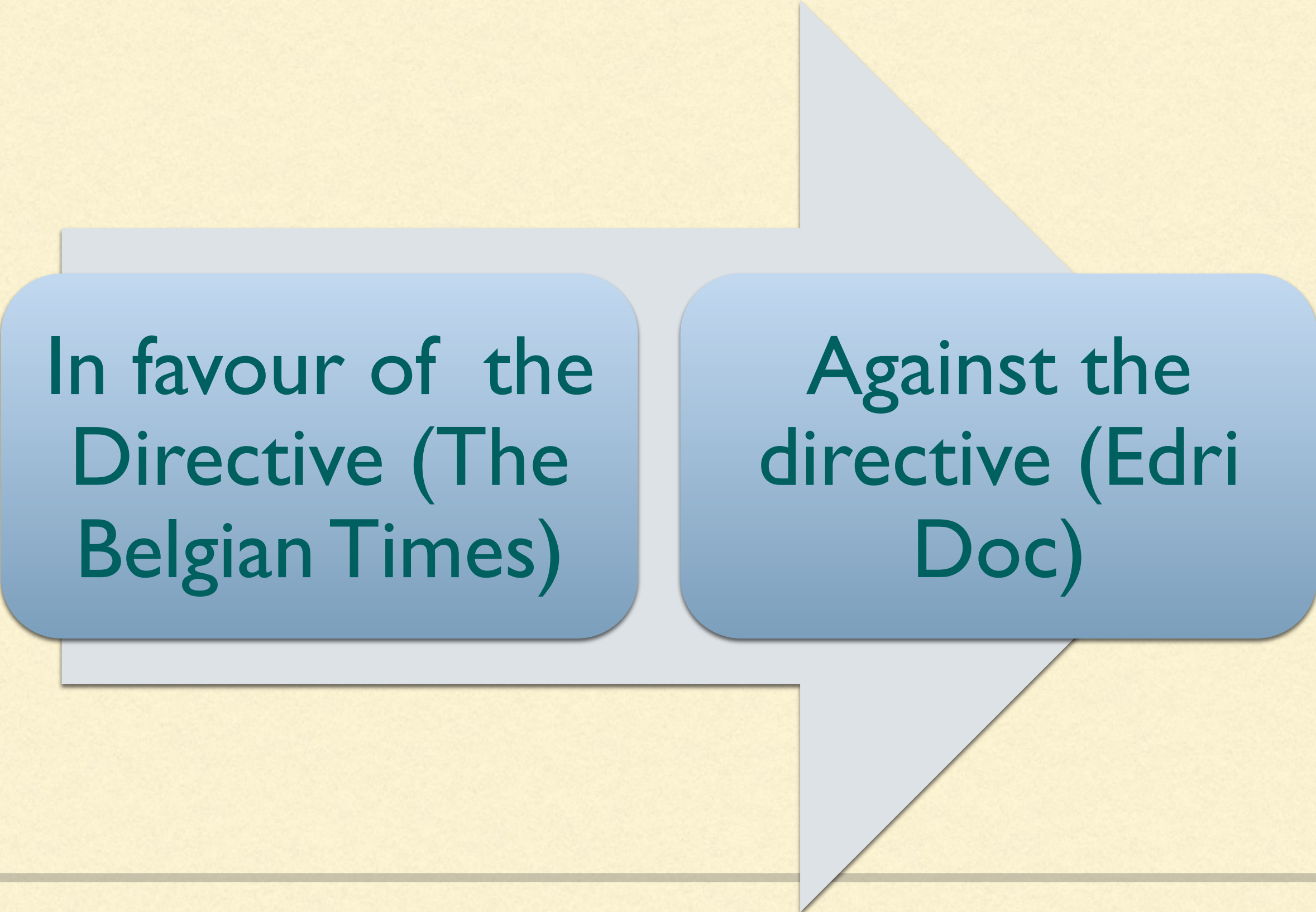
Why having an EU PNR system?

Higher data protection
than current EU-US PNR
Agreement



Harmonisation among
EU Member States

ACTIVITY: EU PNR DIRECTIVE



In favour of the
Directive (The
Belgian Times)

Against the
directive (Edri
Doc)

SWIFT AGREEMENT

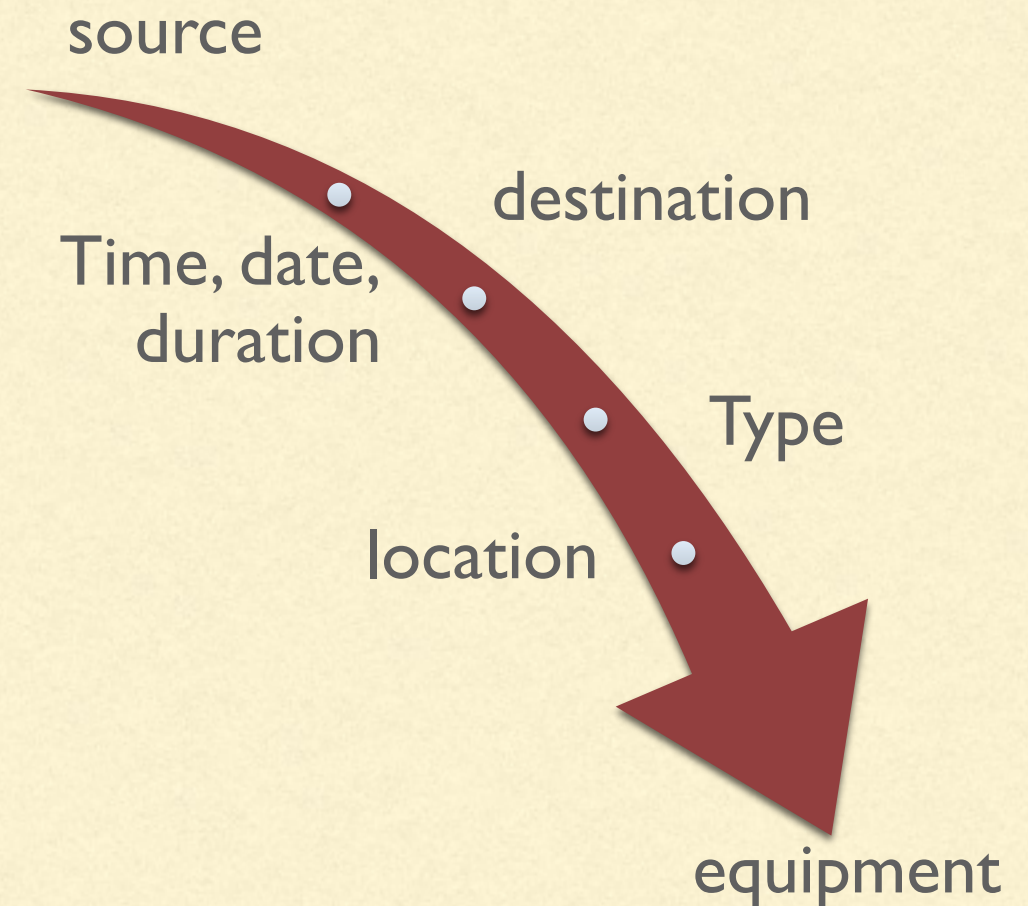
- **2001:** TFTP: Terrorist Finance Tracking Programme
 - **2006:** NYT publication
 - **31.11.2009:** Society for Worldwide Interbank Financial Telecommunication (*SWIFT*) – SWIFT I Agreement
 - **Feb. 2010:** EP veto
 - **August 2010:** SWIFT II Agreement
-

ACCESS TO MY SWIFT DATA

U.S. Department of the Treasury, March 2015:

The Department has reviewed the request for access to records and has determined that we are unable to confirm or deny the existence of any responsive records. Disclosure of such information could identify subjects of ongoing counterterrorism investigations and thereby impair the prevention, detection, investigation, or prosecution of criminal offenses, and could harm public or national security. This information would also be exempt from disclosure under the Freedom of Information Act. *See*, 5 U.S.C. § 552(b)(1) and/or (b)(7)(E) and Article 15(2) of the Agreement.

DATA RETENTION DIRECTIVE



FUTURE INFORMATION SYSTEMS

Entry/Exit System (EES)

Recording crossing of the EU's external borders

The Entry/Exit System will collect the data of non-EU nationals (identity and travel documents) and register their entry and exit records (date and place of entry and exit) to facilitate border crossing of bona fide travellers and to identify visa over-stayers. It will replace the current system of manual stamping of passports.

Participating countries

21 EU Member
States



Denmark to
decide



4 Schengen Associated Countries



Switzerland



Norway



Iceland



Liechtenstein

To whom does it apply?

All **non-EU** nationals



(for short stay
visits only)

Next Steps

- Presented by the Commission: 6 April 2016
- Adoption: November 2017
- Scheduled operation: 2020

ECRIS-TCN system

Criminal records information about non-EU nationals

The ECRIS-Third Country National system will be a centralised hit/no-hit system to supplement the existing EU criminal records databases in relation to non-EU nationals convicted in the European Union. It will allow Member States to quickly find out in which other Member State(s) information on previous convictions of a non-EU national is stored, so that the ECRIS system can then be used to exchange the information.

Participating countries

26 EU Member States



Ireland to decide



To whom does it apply?

All non-EU nationals and **stateless persons** convicted in the EU and whose convictions are stored in the national registers of criminal records.

Next Steps

- Proposals by the Commission:
Directive - 19 January 2016
Regulation - 29 June 2017
- Expected adoption: mid-2018
- Scheduled operation: 2020/2021

European Travel Information and Authorisation System (ETIAS)

Pre-travel security and irregular migration screening of visa-exempt non-EU nationals

ETIAS will gather information on all travellers who are travelling visa-free to Europe and ensure that possible security and irregular migration concerns are identified prior to travel to the Schengen area. This will contribute to a more efficient management of the EU external borders, improving internal security and facilitating a better management of irregular migration.

Participating countries

25 EU Member States



Denmark to decide



4 Schengen Associated Countries



Switzerland

Norway

Iceland

Liechtenstein

To whom does it apply?



EU visa-exempt
non-EU nationals

Next Steps

- Presented by the Commission: 16 November 2016
- Expected adoption: early 2018
- Scheduled operational: 2020

FRAGMENTED DATA PROTECTION RULES

EU DATA SYSTEMS

	Data retention	Categories of data	Data access	Rights of data subject
EU PNR	30 days / 5 years	19	PIUs	access, deletion, correction, blockage, judicial redress, compensation
EU TFTP	-	-	FIUs / Europol and Eurojust	-
APIS	24 hours	9	Border authorities	judicial redress
SIS/SIS II	5 / 10 years	10 / 15	Border authorities, police and customs, judicial authorities, visa and immigration, Europe and Eurojust, VR authorities, Interpol	access, deletion, correction, judicial redress, compensation
VIS	5 years	34	Border authorities, visa and immigration, law enforcement, Europe, third countries, international organisations	access, deletion, correction, judicial redress
EURODAC	2 / 10 years	12	National asylum authorities, law enforcement, Europol	access, deletion, correction, judicial redress, compensation
CIS	3 / 6 / 10 years	14	Customs, other national authorities, third countries, international organisations	access, deletion, correction, blockage
PRÜM	2 years	10	Law enforcement	access, deletion, correction, judicial redress, compensation
SWEDISH IN.	-	15	Law enforcement	-
ECRIS	up to the MS	13	Law enforcement	-
EIO	-	11	Judicial and law enforcement	judicial redress

EU INTERNATIONAL AGREEMENTS

	Categories of data	Deletion sensitive data	Max. data retention periods
PNR EU-US	19	30 days	15 years
PNR EU-Australia	19	Automatically	5.5 years
PNR EU-Canada	19	15 days	5 years
EU-US TFTP	Undefined	Undefined	5 years

WHO CAN ACCESS WHICH DATABASE?

	SIS*	VIS	Eurodac	EES	ETIAS
Exclusively accessible to authorised users within the competent national authorities and under certain conditions/limitations:					
Visa authorities (consular posts) and immigration authorities	●	●		●	
Border controls authorities (border guards)	●	●		●	●
Asylum authorities	●	●	●		
Police authorities	●				
Customs authorities	●				
Judicial authorities	●				
Vehicle, boat and aircraft registration authorities	●				
Carriers				●	●
Under certain conditions:					
Other national authorities		●		●	●
Europol	●	●		●	●
Eurojust	●				
European Border and Coast Guard Agency	●				●

* As proposed in the Commission's December 2016 legislative proposals

EX FRAMEWORK DECISION

2008/977/JHA

It excluded specific legislative instruments

Scope

Europol/
Eurojust

SIS

CIS

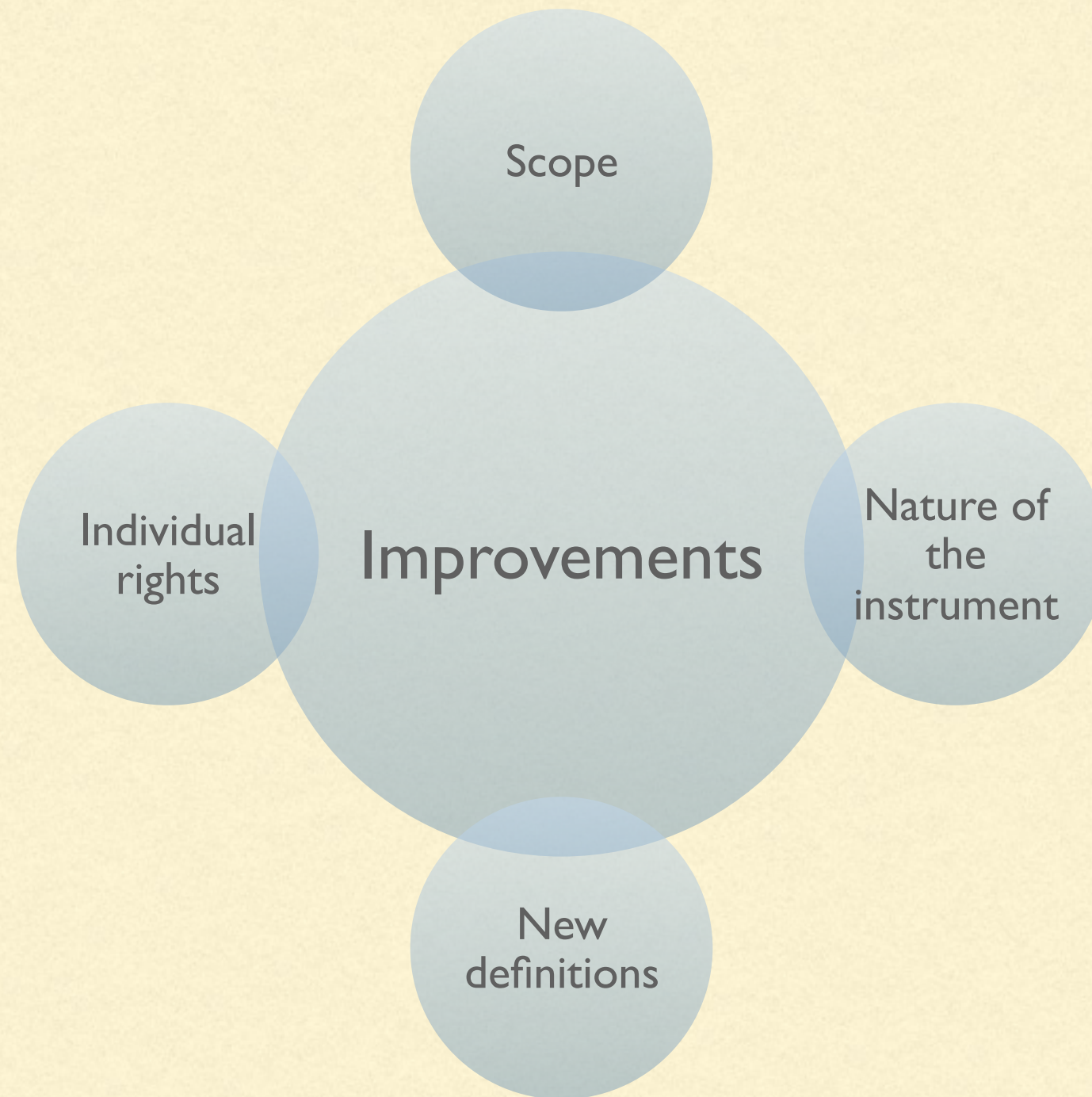
Prüm
Decisions

- Data protection in the field of judicial and criminal matters

NEW LEGISLATION

- “Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)”
 - “Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (Police and Criminal Justice Data Protection Directive).”
-

DIRECTIVE 2016/680



A stylized, high-contrast black and white illustration of a man's head and shoulders. The man has short, dark, spiky hair, wears glasses, and has a beard. He is wearing a dark jacket over a light-colored shirt. The background is a solid light beige color.

National security exemption

Art. 4(2) TEU

Art. 73 TFEU

Thank you for your attention!
