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Proposal for a

COUNCIL DECISION

determining certain consequential and transitional arrangements concerning the cessation of participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Protocol (No 36) on transitional provisions annexed to the Treaty on European Union (TEU), to the Treaty on the Functioning of the European Union (TFEU) and to the Treaty on the European Atomic Energy Community confirms in its Article 9 that the legal effects of the acts of the Union adopted on the basis of the TEU prior to the entry into force of the Treaty of Lisbon shall be preserved until those acts are repealed, annulled or amended.

Article 10(1) of Protocol (No 36) provides that as a transitional measure, and with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the powers of the institutions shall be the following at the date of entry into force of that Treaty, 1 December 2009: the powers of the Commission under Article 258 TFEU shall not be applicable and the powers of the Court of Justice of the EU under Title VI of the TEU, in the version in force before the entry into force of the Treaty of Lisbon, shall remain the same, including where they have been accepted under Article 35(2) of the said TEU.

Article 10(3) of Protocol (No 36) provides that the transitional measure mentioned in Article 10(1) shall cease to have effect five years after the entry into force of the Treaty of Lisbon, on 1 December 2014.

Article 10(4), first subparagraph of Protocol (No 36) provides that at the latest six months before the expiry of the transitional period referred to in Article 10(3), the United Kingdom may notify to the Council that it does not accept, with respect to the acts referred to in Article 10(1), the powers of the institutions referred to in Article 10(1) as set out in the Treaties. In case the United Kingdom has made that notification, all acts referred to in Article 10(1) shall cease to apply to it as from the date of expiry of the transitional period referred to in Article 10(3), that is from 1 December 2014.

The United Kingdom has made the notification mentioned in the first subparagraph of Article 10(4) of Protocol (No 36) on 24 July 2013.

Article 10(4), second subparagraph of Protocol (No 36) provides that the Council, acting by a qualified majority on a proposal from the Commission, shall determine the necessary consequential and transitional arrangements. The United Kingdom shall not participate in the adoption of this decision.

Article 10(4), third subparagraph of Protocol (No 36) provides that the Council, acting by a qualified majority on a proposal from the Commission, may also adopt a decision determining that the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts. A proposal in this respect is submitted to the Council today.¹

Article 10(5) of Protocol (No 36) provides that the United Kingdom may, at any time afterwards, notify the Council of its wish to participate in acts which have ceased to apply to it pursuant to Article 10(4), first subparagraph.

¹ [insert reference to other proposal of the same date]

It is expected that the United Kingdom will notify its wish to participate in 35 acts of the former third pillar *acquis* which will cease to apply to it on 1 December 2014. Any disruption in the implementation and application of these acts should be avoided. It should therefore be provided that these acts will continue to apply to the United Kingdom for a limited transitional period until the decisions of the Council and the Commission authorising the participation of the United Kingdom take effect.

The United Kingdom announced that it does not intend to notify the Council at this stage of its wish to participate in Council Decision 2008/615/JHA of 23 June 2008 on stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime,² in Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Council Decision 2008/615/JHA on stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime³ and in Council Framework Decision 2009/905/JHA of 30 November 2009 on accreditation of forensic service providers carrying out laboratory activities⁴ (hereafter the "Prüm Decisions").

As a consequence of the notification of 24 July 2013 and of the non-notification of a wish to participate, the Prüm Decisions will cease to apply to the United Kingdom from 1 December 2014.

The non-application of the Prüm Decisions to the United Kingdom from 1 December 2014 has as a consequence that the United Kingdom cannot access for law enforcement purposes fingerprints contained in the Eurodac database. The reason for this consequence is contained in Article 20 and recital (32) of Regulation (EU) No 603/2013.⁵ This has no bearing on the application of the remainder of Regulation (EU) No 603/2013 to the United Kingdom.

In view of the practical and operational significance of the Prüm Decisions to the Union for public security, and more particularly for law enforcement and the prevention, detection and investigation of criminal offences, the following arrangements have been made: the United Kingdom will undertake a full business and implementation case to assess the merits and practical benefits of the United Kingdom re-joining the Prüm Decisions and of the necessary steps for it to do so, the results of which will be published by 30 September 2015. It will do so in close consultation with operational partners in the United Kingdom, all other Member States, the Commission, Europol and Eurojust. If this business and implementation case is positive, the United Kingdom will decide, by 31 December 2015, on whether to notify, within the following four weeks, its wish to participate in the Prüm Decisions, in accordance with Article 10(5) of Protocol 36. The United Kingdom has indicated that a positive vote in its Parliament will be required before such a decision.

² OJ L 210, 6.8.2008, p. 1.

³ OJ L 210, 6.8.2008, p. 12.

⁴ OJ L 322, 9.12.2009, p. 14.

⁵ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1

Financial consequences should be attached to the non-respect of those arrangements, as well as to the possible non-participation of the United Kingdom in the Prüm Decisions. A proposal in this respect is presented to the Council today.⁶

2. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed measures

The proposal provides for consequential and transitional arrangements in the meaning of Article 10(4), second subparagraph of Protocol (No 36).

Legal basis

Article 10(4), second subparagraph of Protocol (No 36).

Principle of subsidiarity

Only the Council is authorised, on the basis of Article 10(4), second subparagraph of Protocol (No 36), to adopt consequential and transitional arrangements.

The principle of subsidiarity is therefore not applicable.

Principle of proportionality

The proposal complies with the principle of proportionality.

Choice of instrument

Proposed instrument: Council decision.

Article 10(4), second subparagraph of Protocol (No 36) provides for the Council, acting by a qualified majority on a proposal from the Commission, "determining the necessary consequential and transitional arrangements". A decision is the correct form of act to implement this provision of primary law.

3. BUDGETARY IMPACT

The proposal has no impact on the European Union budget.

⁶ Cp. footnote 1.

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol on transitional provisions, and in particular the second subparagraph of Article 10(4) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Under Protocol (No 36) on transitional provisions, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, the United Kingdom had the possibility to notify to the Council, by 31 May 2014 at the latest, that it does not accept the powers of the Commission and of the Court of Justice introduced by the Treaty of Lisbon with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which had been adopted before the entry into force of the Treaty of Lisbon.
- (2) By letter to the President of the Council of 24 July 2013, the United Kingdom has notified that it did not accept the powers of the Commission and of the Court of Justice introduced by the Treaty of Lisbon in the field of police cooperation and judicial cooperation. As a consequence the relevant acts in the field of police cooperation and judicial cooperation in criminal matters cease to apply to the United Kingdom on 1 December 2014.
- (3) The United Kingdom may notify its wish to participate in the acts which have ceased to apply to it.
- (4) By letter to the President of the Council and to the President of the Commission of [... 2014], the United Kingdom has notified its wish to participate in some of the acts.
- (5) In accordance with the second subparagraph of Article 10(4) of Protocol 36, the Council should, on a proposal from the Commission, determine the necessary consequential and transitional arrangements. The Council may also, on the basis of the third subparagraph of the same provision, determine that the United Kingdom should bear the financial consequences necessarily and unavoidably incurred as a result of the cessation of its participation in those acts.
- (6) Any disruption in the implementation and application of the acts which the United Kingdom has sought to rejoin should be avoided. It should therefore be provided that these acts will continue to apply to the United Kingdom for a limited transitional

period until the decisions of the Council and the Commission authorising the participation of the United Kingdom take effect.

- (7) As the United Kingdom did not notify the Council of its wish to participate in Council Decisions 2008/615/JHA⁷ and 2008/616/JHA⁸ and Council Framework Decision 2009/905/JHA⁹, collectively known as the Prüm Decisions, they will cease to apply to the United Kingdom as from 1 December 2014. As a consequence of the cessation of their application, and until such time as it re-joins these acts, the United Kingdom will be prevented from accessing for law enforcement purposes the Eurodac database set up under Regulation (EU) No 603/2013 of the European Parliament and of the Council.¹⁰
- (8) However, given the practical and operational significance of Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2009/905/JHA to the Union for public security, and more particularly for law enforcement and the prevention, detection and investigation of criminal offences, the United Kingdom will, in close consultation with operational partners in the United Kingdom, all other Member States, the Commission, Europol and Eurojust, undertake a full business and implementation case to assess the merits and practical benefits of the United Kingdom re-joining the Prüm Decisions and the necessary steps for it to do so, the results of which will be published by 30 September 2015.
- (9) If the above business and implementation case is positive, the United Kingdom will decide, by 31 December 2015, on whether to notify, within the following four weeks, of its wish to participate in the Prüm Decisions, in accordance with Article 10(5) of Protocol 36. The United Kingdom has indicated that a positive vote in its Parliament will be required before such decision.
- (10) The rules on the financial consequences incurred as a result of the cessation of the participation of the United Kingdom in the Prüm Decisions shall be provided for in Council Decision [...].
- (11) In accordance with the second subparagraph of Article 10(4) of Protocol (No 36) on transitional provisions, the United Kingdom is not participating in the adoption of this Decision, but is bound by it,

⁷ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

⁸ Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).

⁹ Council Framework Decision 2009/905/JHA of 30 November 2009 on accreditation of forensic service providers carrying out laboratory activities (OJ L 322, 9.12.2009, p. 14).

¹⁰ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The acts which are listed in the annex to this decision shall continue to apply on the United Kingdom until 7 December 2014.

Article 2

1. Within 10 days of the date of entry into force of this Decision at the latest the United Kingdom shall begin to undertake a full business and implementation case to assess the merits and practical benefits of the United Kingdom re-joining Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2009/905/JHA and the necessary steps for it to do so.

It shall do so in close consultation with operational partners in the United Kingdom, all other Member States, the Commission, Europol and Eurojust.

2. By 30 September 2015 at the latest the United Kingdom shall publish the results of that business and implementation case.
3. If the business and implementation case is positive, the United Kingdom shall decide by 31 December 2015, whether to notify the Council of its wish to participate in the Prüm Decisions in accordance with Article 10(5) of Protocol (No 36) on transitional provisions. The notification shall be made within four weeks from 31 December 2015.

Article 3

Until such time as a decision confirming the United Kingdom's participation in Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2009/905/JHA takes effect, the United Kingdom shall be prevented from accessing for law enforcement purposes the Eurodac database set up under Regulation (EU) No 603/2013.

Article 4

If the United Kingdom has not notified of its wish to participate in Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2009/905/JHA within four weeks from 31 December 2015, the Commission shall submit a report to the European Parliament and to the Council on the effects of the non-participation of the United Kingdom in the Prüm Decisions.

Article 5

This Decision shall enter into force on 30 November 2014.

Done at Brussels,

*For the Council
The President*