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Proposal for a

COUNCIL DECISION

determining certain direct financial consequences incurred as a result of the cessation of the 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on the basis of the TEU prior to the entry into force of the Treaty of Lisbon shall be preserved until those acts are repealed, annulled or amended.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 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^o36) 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.

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.

The United Kingdom announced that it does not intend to notify the Council 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,¹ 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 crime² and in Council Framework Decision 2009/905/JHA of 30 November 2009 on accreditation of forensic service providers carrying out laboratory activities³ (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 cease to apply to the United Kingdom from 1 December 2014.

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 Commission has proposed a Council Decision on consequential and transitional arrangements which provides for binding arrangements [...].⁴

The United Kingdom has been allocated funds from the ISEC Programme as set out in Council Decision 2007/125/JHA of 12 February 2007 establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme 'Prevention of and Fight against Crime'⁵ for two projects related to the Prüm Decisions, first concerning the implementation by the United Kingdom of the Prüm DNA Exchange, with a maximum co-funding of EUR 961 019 granted to the Home Office, and secondly concerning the Prüm Fingerprint Evaluation project by the United Kingdom, with a maximum co-funding of EUR 547 836 granted to the Home Office. This makes for a total of EUR 1 508 855.

If the United Kingdom does not respect a condition contained in the Council Decision on consequential and transitional arrangements [...], or if the United Kingdom decides not to participate in the Prüm Decisions, it should repay the sum which has been actually paid to it, up to the total of EUR 1 508 855.

¹ OJ L 210, 6.8.2008, p. 1.

² OJ L 210, 6.8.2008, p. 12.

³ OJ L 322, 9.12.2009, p. 14.

⁴ [insert reference to the other proposal of the same date]

⁵ OJ L 58, 24.2.2007, p. 7.

2. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed measures

The proposal determines the direct financial consequences necessarily and unavoidably incurred as a result of the cessation of the participation of the United Kingdom in acts in the meaning of Article 10(4), third subparagraph of Protocol (No°36).

Legal basis

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

Principle of subsidiarity

Only the Council is authorised, on the basis of Article 10(4), third subparagraph of Protocol (No°36), to adopt a decision determining that the United Kingdom shall bear the direct financial consequences necessarily and unavoidably incurred as a result of the cessation of its participation in the acts concerned.

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), third subparagraph of Protocol (No°36) provides for the Council, acting by a qualified majority on a proposal from the Commission, to possibly 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 decision is therefore the form of act expressly provided for in this provision of primary law.

3. BUDGETARY IMPACT

The proposal has a potential positive impact on the European Union budget, as it provides in certain hypotheses for the repayment by the United Kingdom of up to EUR 1 508 855 received from the Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol on transitional provisions, and in particular the third 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) As the United Kingdom did not notify the Council of its wish to participate in Council Decisions 2008/615/JHA⁶ and 2008/616/JHA⁷ and Council Framework Decision 2009/905/JHA⁸, collectively known as the Prüm Decisions, they will cease to apply to the United Kingdom as from 1 December 2014. However, given 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 Council decided in its Decision [...] ⁹ that 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 the necessary steps for it to do so, the results of which will be published by 30 September 2015. If the 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.
- (7) Funds from the Programme ‘Prevention of and Fight against Crime’ established by Council Decision 2007/125/JHA¹⁰ have been allocated to the United Kingdom for two projects related to Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2009/905/JHA, first concerning the implementation by the United Kingdom of the Prüm DNA Exchange, with a maximum co-funding of EUR 961 019 granted to the Home Office, and secondly concerning the Prüm Fingerprint Evaluation project by the United Kingdom, with a maximum co-funding of EUR 547 836 granted to the Home Office. This makes a total of EUR 1 508 855.
- (8) In case the United Kingdom does not respect one of the deadlines contained in Article 1 of Decision [...] *determining certain consequential and transitional arrangements*] or if the United Kingdom decides not to participate in Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2009/905/JHA, the United Kingdom should repay, as a direct financial consequence, necessarily and unavoidably incurred as a result of the cessation of its participation in the Prüm Decisions, the amounts actually paid by the Commission as a contribution from the Union budget for the implementation of those Decisions.
- (9) In accordance with the third subparagraph of Article 10(4) of Protocol (No 36) on transitional provisions, the United Kingdom is participating in the adoption of this Decision and is bound by it,

⁶ 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).

⁷ 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).

⁸ 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).

⁹ Council Decision ... of ... 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.

¹⁰ Council Decision of 12 February 2007 establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme Prevention of and Fight against Crime (OJ L 58, 24.2.2007, p. 7).

HAS ADOPTED THIS DECISION:

Article 1

In case the United Kingdom does not respect one of the deadlines set out in Article 1 of Decision [... *determining certain consequential and transitional arrangements*] or if the United Kingdom decides not to participate in Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2009/905/JHA, it shall repay to the budget of the European Union the sums received under the Programme 'Prevention of and Fight against Crime' up to EUR 1 508 855.

Article 2

This Decision shall enter into force on 1 December 2014.

Done at Brussels,

*For the Council
The President*