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From: Presidency
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Subject: 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
- Revised Draft

Delegations will find enclosed a revised draft of the Decision on transitional measures taking into account some of the comments made so far.

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

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 **direct** 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/JHA¹ and 2008/616/JHA² and Council Framework Decision 2009/905/JHA³, ~~collectively known as~~ **herein after** 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.⁴
- (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.

¹ 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).

² 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).

³ 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).

⁴ 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).

- (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.

HAS ADOPTED THIS DECISION:

Article 1

The acts which are listed in the Annex to this decision shall continue to apply ~~on~~ to 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*

List of acts referred to in Article 1

1. Convention implementing the Schengen Agreement of 1985: Article 39 ~~to the extent that that this provision has not been replaced by Council Framework Decision 2006/960/JHA,~~ Article 40, Articles 42 and 43 (to the extent that they relate to Article 40), Article 44, Article 46, Article 47 (except (2)(c) and (4)), ~~Articles 54 to 58, Article 55, Article 56, Article 57, Article 58,~~ Articles 59 to 69 (to the extent necessary in relation to the Associated EFTA States) Article 71, Article 72, ~~Articles 126 to 130~~ **to 130 (to the extent that they relate to the provisions of the Schengen Convention in which the United Kingdom participates)**, ~~Article 127, Article 128, Article 129, Article 130,~~ and Final Act - Declaration N° 3 (concerning Article 71(2)) (OJ L 239, 22.9.2000, p. 19)
2. Council Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 248, 3.10.2000, p. 1)
3. Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 260, 11.10.2003, p. 37)
4. Joint Action 97/827/JHA of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime (OJ L 344, 15.12.1997, p. 7)
5. Council Act of 18 December 1997 drawing up the Convention on mutual assistance and co-operation between customs administrations (OJ C 24, 23.1.98, p. 1)
6. Joint Action 98/700/JHA of 3 December 1998 concerning the setting up of a European Image Archiving System (FADO) (OJ L 333, 9.12.98, p. 4)
7. Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the internet (OJ L 138, 9.6.2000, p. 1)
8. Council Decision 2000/641/JHA of 17 October 2000 establishing a secretariat for the joint supervisory data-protection bodies set up by the Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention) (OJ L 271, 24.10.2000, p. 1)
9. Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for co-operation between financial intelligence units of Member States in respect of exchanging information (OJ L 271, 24.10.2000, p. 4)

10. Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1)
11. Council Decision 2003/659/JHA amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 245, 29.9.2003, p. 44)
12. Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 138, 4.6.2009, p. 14)
13. Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension (OJ L 121, 8.5.2002, p. 1)
14. Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension (OJ L 155, 15.6.2007, p. 76)
15. Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1)
16. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1)
17. Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.3.2009, p. 24)
18. Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16)
 - Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.3.2009, p. 24)
19. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognitions to confiscation orders (OJ L 328, 24.11.2006, p. 59)
 - Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.3.2009, p. 24)

20. Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union
(OJ L 386, 29.12.2006, p. 89)
21. Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II (third pillar)
(OJ L 79, 20.3.2007, p. 29)
22. Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63)
23. Council Decision 2007/845/JHA of 6 December 2007 concerning co-operation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or property related to, crime
(OJ L 332, 18.12.2007, p. 103)
24. Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60)
25. Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L 220, 15.8.2008, p. 32)
26. Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purposes of their enforcement in the European Union
(JO L 327, 5.12.2008, p. 27)
 - Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.3.2009, p. 24)
27. Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130)
28. Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23)
29. Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA
(OJ L 93, 7.4.2009, p. 33)

30. Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37)
 31. Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information (OJ L 325, 11.12.2009, p. 6)
 32. Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files (OJ L 325, 11.12.2009, p. 14)
 33. Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information (OJ L 332, 17.12.09, p. 17)
 34. Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11.11.2009, p. 20)
 35. Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20)
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