The Council of the European Union.

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NOTE

From: Presidency
To: Delegations
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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 possiblity 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/JHA\(^1\) and 2008/616/JHA\(^2\) and Council Framework Decision 2009/905/JHA\(^3\), collectively known as \textit{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.

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\(^4\) 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 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 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 No 3 (concerning Article 71(2)) (OJ L 239, 22.9.2000, p. 19)


5. Council Act of 18 December 1997 drawing up the Convention on mutual assistance and cooperation between customs administrations (OJ C 24, 23.1.98, p. 1)


