



House of Commons

European Scrutiny Committee

Nineteenth Report of Session 2014–15

**Documents considered by the Committee on 5 November
2014, including the following recommendation for debate:**

EU Budget 2014



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Report, together with formal minutes

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

EC	(in " <i>Legal base</i> ") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	(in " <i>Legal base</i> ") Treaty on European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
RIA	Regulatory Impact Assessment
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) can be downloaded from the Cabinet Office website:
<http://europeanmemoranda.cabinetoffice.gov.uk/>.

Letters sent by Ministers to the Committee relating to European documents are available for the public to inspect; anyone wishing to do so should contact the staff of the Committee ("Contacts" below).

Staff

The staff of the Committee are Sarah Davies (Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Leigh Gibson (Clerk Adviser), Peter Harborne (Clerk Adviser), Arnold Ridout (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Joanna Welham (Second Clerk), Julie Evans (Senior Committee Assistant), Jane Bliss and Beatrice Woods (Committee Assistants), Paula Saunderson and Ravi Abhayaratne (Office Support Assistants).

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1 EU Budget 2014

Committee's assessment	Politically important
<u>Committee's decision</u>	Not cleared from scrutiny; for debate on the floor of the House
Document details	Draft Amending Budget for the 2014 EU Budget
Legal base	Article 314 TFEU in conjunction with Article 106(a) EURATOM; co-decision; QMV
Department	HM Treasury
Document numbers	(36427), 14442/14, COM(14) 649

Summary and Committee's conclusions

1.1 The Commission has reported a total retrospective adjustment amount of €9,528 million (£7,943 million) as a result of adjustments to the VAT and GNI bases over the period 2002–13 (1995–2013 for one Member State). The adjustments increase the UK's contribution for 2014 by £2,873 million.

1.2 Draft Amending Budget No. 6 to the 2014 Budget provides a revision of the forecast to TORs and VAT and GNI balances, resulting in a reduction of total Member State contributions, and includes some minor expenditure transfers between EU budget lines and a small increase in expenditure for the European Ombudsman.

1.3 The main purpose of the proposal is to return to Member States their share of the additional contributions to the EU budget which result from the adjustments to the VAT and GNI balances of individual Member States, which constitute a windfall for the EU budget. It would redistribute the total retrospective adjustment on the basis of Member States' share in EU GNI in 2014, therefore returning to the UK €1,491 million (£1,243 million). The UK would face a net cost of around £1,630 million if the Draft Amending Budget is adopted before 1 December.

1.4 The Government tells us that:

- whilst it supports the principle of returning additional contributions to Member States, it sees the Draft Amending Budget as a mechanistic procedure which is a direct consequence of and entirely dependent upon the gross adjustments;
- it is seeking changes to these underlying adjustments;
- therefore, the Government cannot set out its position on the proposal, which will depend on the outcome of wider negotiations; and
- if these negotiations reach an acceptable conclusion, it will support the Draft Amending Budget.

1.5 In order to make the proposed return of contributions effective by 1 December the Draft Amending Budget would have to be adopted by 15 November and the Government says that the Presidency intends to seek an override of the Treaty requirement for an eight-

week period for parliamentary scrutiny. The Government tells us that it intends to support this timetabling and asks us, in the circumstances and in order to allow flexibility if its negotiations are successful, to waive scrutiny of this proposal.

1.6 We recognise why the Government wishes us to quickly clear this proposal from scrutiny. But the matter of the potential significant increase to the UK's EU budgetary contribution is of great political importance. Therefore we recommend that the Draft Amending Budget be debated on the floor of the House. This debate would allow Members to explore with Ministers both:

- **how the contribution problem might best be resolved; and**
- **some apparent anomalies, such as that some Member States are to receive repayments related to years before they acceded and Member States, such as Greece and Cyprus, with very troubled economies, are faced with significantly increased contributions.**

1.7 Obviously the debate should take place as soon as possible and we observe that a debate on 10 or 11 November would fit with a Council deadline of 15 November.

Full details of the documents: Draft Amending Budget No. 6 to the General Budget for 2014: General statement of revenue; Statement of expenditure by section: Section III — Commission and Section VIII — European Ombudsman: (36427), [14442/14](#), COM(14) 649.

Background

1.8 The revenue of the EU budget is largely derived from the EU's 'Own Resources', which comprise Traditional Own Resources (TORs — customs duties and sugar levies), contributions based on a hypothetical harmonised VAT base and GNI-based contributions, as set out in the Own Resources Decision (ORD), the current version of which was adopted in 2007.

1.9 The Own Resources legislation makes provisions for adjustments to past VAT and GNI-based contributions for the years that the calculations remain open. Calculations are normally closed after 30 September of the fourth year following a given financial year unless either the Commission or the relevant Member State place reservations on the underpinning numbers by notifying specific points. These adjustments ("VAT and GNI balances") result from revisions to historic VAT and GNI data underpinning VAT and GNI-based contributions.

1.10 On 17 October, the Commission issued an Information Note for Member States on VAT and GNI balances (COMBUD 369/14)¹ setting out the adjustments to Member States' contributions as a result of changes to the GNI and VAT bases for 1995–2013 (back to 2002 for the UK). In accordance with the Own Resources legislation Member States will have to enter into the own resources account VAT and GNI balances and the adjustments

¹ See <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2014/10/28/information-note-for-member-states%20information-note-for-member-states.pdf>.

to these balances, on the first working day of December. The full financial implications for all Member States are set out in that note.

1.11 During the course of a financial year the Commission presents Draft Amending Budgets (DABs) proposing increases or reductions for revenue and expenditure in the current EU General Budget.

The document

1.12 This Commission document, Draft Amending Budget No. 6 to the 2014 budget (DAB 6/2014) provides a revision of the forecast to TORs and VAT and GNI balances, resulting in a reduction of total Member State contributions of €9,528 million (£7,943 million), and includes some minor expenditure transfers between EU budget lines and a small increase in expenditure for the European Ombudsman.

Revision of the forecast of TORs, and VAT and GNI balances

1.13 With DAB 6/2014 the Commission proposes, as foreshadowed in its accompanying Information Note, COMBUD 369/14:

- entry of a positive amount for GNI balances of €9,813 million (£8,181 million) and a negative amount for Member States' VAT balances of €285 million (£238 million), leaving a net total reduction of GNI contributions of €9,528 million (£7,943 million) — the Commission notes that GNI balances are exceptionally high as a result of the work carried out by individual Member States to ensure that existing GNI reservations can be lifted, in addition to the major revisions of GNI data made by some of them; and
- an increase in TORs of €420 million (£350 million) to reflect the trend in customs duties made available to the budget up to now — the Commission notes that if new data for the last quarter of the year implies significant changes to this estimate, it might revise its figures in the course of the budgetary procedure.

Expenditure transfers between budget lines and additional expenditure

1.14 The Commission also proposes in the DAB:

- a reduction in the budgetary appropriations related to the European Maritime and Fisheries Fund and the reserve for Sustainable Fisheries Partnership Agreements, for a total amount of €76.3 million (£63.6 million) in commitment appropriations and €6.2 million (£5.2 million) in payment appropriations;
- redeployment of the payment appropriations to the Emergency Aid Reserve to help with possible humanitarian crises till the end of the year; and
- increases in both commitment and payment appropriations of €93,500 (£77,951) for the European Ombudsman, in order to ensure that all salary remunerations due in 2014 can be paid by the end of the year.

1.15 The main purpose of DAB 6/2014 is to return to Member States their share of the additional contributions to the EU budget which result from the adjustments to the VAT and GNI balances of individual Member States, which constitute a windfall for the EU budget. Without a DAB, the Commission cannot return these funds to Member States. Such windfalls are distributed to Member States in proportion to their respective shares in EU GNI in the year the amounts are budgeted — in this case 2014. Current legislation requires Member States to make available any additional contributions on the first working day of December.

The Government's view

1.16 In his Explanatory Memorandum of 3 November the Financial Secretary to the Treasury (Mr David Gauke), noting that DAB 6/2014 is a mechanism through which the Commission are authorised to return to Member States their share of the additional contributions to the EU budget which result from adjustments to the VAT and GNI balances of individual Member States, says that:

- taken together with the adjusted Member State contributions as a result of adjustments to VAT and GNI bases, the UK would face a net payment to the Commission if the DAB is adopted before 1 December 2014;
- whilst the Government supports the principle of returning additional contributions to Member States, it sees DAB 6/2014 as a mechanistic procedure which is a direct consequence of and entirely dependent upon the gross adjustments;
- it is seeking changes to these underlying adjustments;
- therefore, the Government cannot set out its position on the DAB, which will depend on the outcome of wider negotiations; and
- if these negotiations reach an acceptable conclusion, it will support DAB 6/2014.

1.17 Noting both that the combined effect of the changes proposed in the DAB would reduce overall contributions required from Member States by €9,948 million (£8,181 million) and that the Commission Information Note, COMBUD 369/14, reports a total retrospective adjustment amount of €9,528 million (£7,943 million) as a result of adjustments to the VAT and GNI bases over the period 2002–13 (1995–2013 for one Member State), the Minister says that:

- the adjustment increases the UK's contribution by £2,873 million;
- DAB 6/2014 would redistribute the total retrospective adjustment resulting from revisions to GNI and VAT, on the basis of Member States' share in EU GNI in 2014, therefore returning to the UK €1,491 million (£1,243 million);
- taken together, the UK would face a net cost of around £1,630 million if DAB 6/2014 is adopted before 1 December.²

² These sterling numbers differ from the Commission preliminary estimate of a net cost to the UK of €2,125 million due to the exchange rate used to calculate the adjustment payment. UK contributions to the EU budget are made in

1.18 The Minister comments that the minor transfers between budget lines and the small proposed increase in expenditure for the European Ombudsman are broadly budget neutral.

1.19 On timetabling for DAB 6/2014 the Minister, noting that under Protocol 1, Article 4 TFEU eight weeks must be given from publication of the proposal to a Council vote and that exceptions are possible, but only in cases of urgency, and must be justified, says that:

- the proposal was published by the Commission on 17 October;
- it must be adopted by 15 November in order for the repayment allowed by the DAB to be possible on 1 December;
- it must also be approved by the European Parliament by this deadline;
- the Government understands that the Presidency will request the Council to agree to shorten the eight week period; and
- given the value of additional Member States' contributions that would be returned to the UK if DAB 6/2014 were adopted by 15 November, the Government would look to support the shortened period before the proposal is put to a Council vote, but will endeavour to ensure that both Houses of Parliament have first been given the opportunity to consider the proposal.

1.20 In his letter of 3 November accompanying his Explanatory Memorandum the Minister asks for a waiver of parliamentary scrutiny in this instance. He says that:

- he believes this is necessary given the fast-moving pace of wider negotiations on the adjustment payment, on which DAB 6/2014 is entirely dependent;
- as the Prime Minister said in his post-European Council statement on 27 October,³ the Government is seeking changes to these underlying adjustments;
- therefore, the Government's position on DAB 6/2014 will depend on the outcome of the negotiations;
- if the negotiations reach an acceptable outcome, the Government will support the DAB as a means of returning the additional contributions requested as a result of the data revisions; and
- to retain flexibility for the negotiations, and in order to obtain the best overall outcome for the UK, the Government requests, exceptionally in this case, a waiver of parliamentary scrutiny.

sterling using the exchange rate on 31 December 2013 (€1 = £0.8337). The Commission Information Note reflects the value of the UK payment to the Commission in euros at the time of writing. Therefore the table in Annex 2 of the Note shows the gross value of £2,873 million as €3,616 million on the basis of the current sterling/euro exchange rate. This different exchange rate explains the difference between the net figure presented by the Commission and the figure given here.

3 See <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141027/debtext/141027-0001.htm#14102711000001>.

Previous Committee Reports

None.

2 The UK's 2014 block opt-out decision

Committee's assessment <u>Committee's decision</u>	Legally and politically important Not cleared from scrutiny; further information requested; relevant to the debate yet to be announced on the UK's block opt-out decision; drawn to the attention of the Home Affairs and Justice Committees
Document details	(a) Draft Council Decision determining certain direct financial consequences incurred as a result of the cessation of the participation of the UK 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 (b) Draft Council Decision determining certain consequential and transitional arrangements concerning the cessation of the participation of the UK 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
Legal base	(a) Protocol No. 36 on Transitional Provisions, Article 10(4), third sub-paragraph; QMV (b) Protocol No. 36 on Transitional Provisions, Article 10(4), second sub-paragraph; QMV (excluding the UK)
Department	(Both) Home Office
Document numbers	(a) (36368), 13680/14, COM(14) 595 (b) (36369), 13683/14 + ADD 1, COM(14) 596

Summary and Committee's conclusions

2.1 On 1 December 2014, the UK will cease to be bound by around 110 EU police and criminal justice measures which are subject to the UK's 2014 "block opt-out". The UK's right to opt out of these measures *en masse* is set out in Protocol No. 36 on Transitional Provisions annexed to the EU Treaties ("Protocol 36"). Protocol 36 allows the UK to opt

out of EU police and criminal justice measures adopted before the Lisbon Treaty took effect, on 1 December 2009, with the exception of those that have been amended, or repealed and replaced, by a post-Lisbon measure in which the UK has chosen to participate. The procedures for opting out are set out in Article 10(4) of Protocol 36. On 24 July 2013, the Prime Minister formally notified the EU institutions that the UK had decided to exercise its block opt-out, following a debate and vote in both Houses of Parliament.⁴

2.2 Protocol 36 also includes provision for the UK to seek to rejoin individual measures which cease to apply to it on 1 December 2014. The relevant procedures are set out in Article 10(5) of the Protocol.

2.3 Command Paper 8897, published on 3 July 2014, lists 35 EU police and criminal justice measures which the Government wishes to rejoin. The list reflects the outcome of “detailed technical level discussions with the Commission and Council”.⁵ The Government has undertaken to hold a further debate and vote in both Houses of Parliament on these measures before making a formal application to rejoin them. It has said that the debate and vote should be held after the UK has reached an “in principle agreement” with the Commission and the Council on the relevant measures.⁶

2.4 In reaching such an agreement, the Government told us in July that it had been able to “resist many of the changes demanded by the Commission and other Member States”.⁷ During a general debate on the UK’s block opt-out on 10 July 2014, the Home Secretary indicated that there had been pressure for the UK to rejoin three additional measures: two so-called “Prüm” Decisions concerning cross-border cooperation on serious crime and terrorism, and a Framework Decision on probation.⁸ She explained that the UK would not rejoin the Prüm measures on 1 December 2014, but added:

“In order for the House to consider the matter carefully, the Government will produce a business and implementation case and run a small-scale pilot with all the necessary safeguards in place. We will publish that by way of a Command Paper and bring the issue back to Parliament so that it can be debated in an informed way. We are working towards doing so by the end of next year. However, the decision on whether to rejoin Prüm would be one for Parliament.”⁹

2.5 As regards the Framework Decision on probation, the Justice Secretary informed the House:

“We have indicated to the Commission [...] that we will take another look at the measure when there is enough evidence of it working and of its impacts to see whether there would be benefits to the UK in taking part. To support that decision, we will publish for Parliament an assessment of the potential impacts. Clearly, we

4 The debate and vote in the House of Commons took place on 15 July 2013.

5 Cm 8897, p.2.

6 Letter of 6 April 2014 from the Home and Justice Secretaries (Mrs Theresa May and Chris Grayling) to the Chairs of the European Scrutiny, Home Affairs and Justice Committees.

7 Letter of 3 July 2014 from the Home and Justice Secretaries to the Chair of the European Scrutiny Committee.

8 Council Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2008/947/JHA.

9 *HC Deb*, 10 July 2014, col. 492.

will not agree to join this or any further JHA measure unless it is in our national interest to do so.”¹⁰

2.6 The two draft Council Decisions deposited for scrutiny concern provisions contained in Article 10(4) of Protocol 36. These provisions are intended to address the consequences — legal, practical and financial — of the UK’s decision to opt out of pre-Lisbon EU police and criminal justice measures. The first — document (a) — seeks to implement the third sub-paragraph of Article 10(4) which allows the Council to adopt a decision “determining that the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred” as a result of exercising the block opt-out. The second — document (b) — seeks to implement the second sub-paragraph of Article 10(4) which requires the Council to “determine the necessary consequential and transitional arrangements”. Both draft Council Decisions have to be agreed by a qualified majority, but the UK is excluded from taking part in the vote on document (b) on transitional arrangements.

2.7 On 3 November 2014, the Government laid before Parliament *The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014*. According to the Government’s accompanying Explanatory Memorandum, these Regulations will “give effect to a Commission Decision and a Council Decision (to be published in the Official Journal in due course) (together “the Protocol 36 Decisions”), to be made under Article 10 of Protocol (No. 36) on Transitional Provisions (“Protocol 36”) to the EU Treaties”.¹¹ The Regulations, which take the form of a single statutory instrument under section 2(2) of the European Communities Act 1972, will “complete transposition in relation to 11 of the 35 measures which the Government has said it is in the national interest for the UK to seek to rejoin”.¹² The Government envisages that the Regulations will be made “on or shortly after 1 December 2014” as the power to make them “only crystallises once the Protocol 36 Decisions have been made by the Commission and the Council. This is expected to be no later than shortly after midnight (00:00) on 1st December 2014”.¹³ Draft Council and Commission Decisions confirming UK participation in the 35 measures listed in Command Paper 8897 have not yet been deposited for scrutiny.

2.8 In this Report, we set out the Government’s position on the two draft Council Decisions concerning the financial consequences of the UK’s block opt-out decision and the consequential and transitional arrangements. We seek further information from the Minister for Modern Slavery and Organised Crime (Karen Bradley) on a number of concerns arising from these documents and the broader process of Parliamentary scrutiny of the UK’s block opt-out decision.

2.9 We repeat the view expressed in our Sixteenth Report, agreed on 29 October 2014, that a delay of more than two weeks in providing Explanatory Memoranda on these draft Decisions, given the imminence of the 1 December 2014 deadline, is wholly unacceptable.¹⁴ Our concern is compounded by the absence of any explanation or

10 *HC Deb*, 10 July 2014, col. 549.

11 See p.1 of the Government’s Explanatory Memorandum on the Regulations.

12 *Ibid.*

13 *Ibid.*

14 See Council document 9883/14, (36117), Sixteenth Report HC 219-xv1 (2014-15), chapter 12 (29 October 2014).

apology by the Minister in her Explanatory Memoranda, an omission which serves to underline the Government's failure to engage with Parliament on this important matter in a timely and transparent manner.

2.10 Both draft Decisions are based on Article 10(4) of Protocol 36. Article 10(4) establishes the procedures for the UK to opt *en masse* of pre-Lisbon EU police and criminal justice measures and confers powers on the Council to determine any direct financial consequences, as well as the “necessary consequential and transitional arrangements”, ensuing from the UK's opt-out. The Minister suggests that the second sub-paragraph of Article 10(4) confers a “wide power” to adopt consequential and transitional arrangements which include extending the application to the UK of 35 measures which would otherwise cease to apply on 1 December 2014. The extension is for a further 6 days, until 7 December 2014, thereby enabling a potential legal gap to be avoided.

2.11 The Minister tells us that the content of the draft Decision on consequential and transitional arrangements — document (b) — “largely reflects the position agreed in principle by the UK and the Commission” and communicated to the House in the general debate held on 10 July 2014. We remind the Minister that the Home Secretary referred on that occasion to a commitment to produce a business and implementation case on the Prüm system. Command Paper 8671, published in July 2013, clearly indicates that the Prüm system comprises two, not three, EU measures.¹⁵ It does not include Framework Decision 2009/905/JHA on the accreditation of forensic service providers as part of the Prüm system. During the general debate, the Justice Secretary also indicated that the Government would “take another look” at Framework Decision 2008/947/JHA on the mutual recognition of probation decisions and “publish for Parliament an assessment of the potential impacts”.¹⁶

2.12 The Minister's Explanatory Memorandum does not explain why the Prüm package has expanded from two to three measures or why the Framework Decision on probation no longer appears to feature in the proposed consequential and transitional arrangements. We ask her to state, in terms, whether she accepts that Framework Decision 2009/905/JHA on the accreditation of forensic service providers forms an integral and inseparable part of the Prüm package and to explain why this should be the case. We also ask her whether the Government still intends to review UK participation in the Framework Decision on probation and publish an impact assessment.

2.13 The Minister states that there are “inaccuracies in relation to certain references to Framework Decision 2009/905/JHA [on the accreditation of forensic service providers] in relation to funding received”.¹⁷ We ask her to explain these inaccuracies, their implications for the sum that the UK may be required to repay, and whether they will affect the Government's support for the draft Decision.

15 See Cm 8671, p.106.

16 *HC Deb.* 10 July 2014, col. 549.

17 See para 21 of the Minister's Explanatory Memorandum on document (a).

2.14 The Minister informs us that “the decision to rejoin the package of 35 measures will require secondary legislation”.¹⁸ We assume that the secondary legislation to which she refers is *The Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014* which were laid in Parliament on 3 November. At first sight, the need for additional legislation would appear to be counter-intuitive, given that the UK already participates in, and is bound by, the 35 measures, including any deadlines contained in them for transposition and implementation. We understand that the purpose of the Regulations is to complete transposition in relation to 11 of the 35 measures. The need to do so in the manner proposed, and at such short notice, remains unclear. We ask the Minister to explain whether the Regulations are intended to avoid or mitigate the risk that the Commission will bring infringement proceedings against the UK shortly after 1 December 2014, or whether ensuring full and timely transposition of the measures by that date is one of the conditions imposed by the Commission as a pre-requisite for UK participation in the 35 measures.¹⁹

2.15 We ask the Minister to confirm that the affirmative resolution procedure for approval of the Regulations is not intended to substitute for a full debate and vote on the 35 measures and reiterate our position that there should be a separate motion for each measure the Government proposes to seek to rejoin.

2.16 We note that the Government’s Explanatory Memorandum accompanying the Regulations indicates that the power to make them derives from a Commission Decision and a Council Decision which have not yet been deposited for scrutiny. We ask the Minister to tell us when we can expect the draft Decisions to be deposited and to give an assurance that we will have sufficient opportunity to consider and report on them before 1 December 2014.

2.17 Pending further information from the Minister, the draft Decisions on financial consequences and consequential and transitional arrangements remain under scrutiny. We draw these instruments, and our observations, to the attention of the Home Affairs and Justice Select Committees.

Full details of the documents: (a) Draft 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: (36368), 13680/14, COM(14) 595; (b) Draft Council Decision determining certain consequential and transitional arrangements concerning 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: (36369), 13683/14 + ADD 1, COM(14) 596.

18 See paras 12 and 14 of the Minister’s Explanatory Memoranda.

19 Under Article 331(1) TFEU, the Commission may stipulate the conditions that have to be fulfilled in order to participate in the 35 measures the UK wishes to rejoin.

Background

2.18 Further detailed information and analysis on the UK's block opt-out decision, and the measures the Government wishes to rejoin, is contained in the Reports listed at the end of this chapter which we, and our colleagues on the Home Affairs and Justice Committees in the Commons and the European Union Committee in the Lords, have published over the last eighteen months.

2.19 The transitional provisions contained in Article 10 of Protocol 36 apply to pre-Lisbon EU police and criminal justice measures adopted under the intergovernmental "Third Pillar" of the Treaty on European Union. Following the expiry of a five-year transitional period, which started on 1 December 2009, these measures will be subject to the full jurisdiction of the Court of Justice and the Commission's enforcement powers for all Member States participating in them from 1 December 2014. The UK has given notice that it will not participate in these measures, which will cease to apply to the UK on 1 December 2014.

2.20 Article 10(4) of Protocol 36 includes provisions to address the consequences of a decision by the UK to opt out of these measures. Sub-paragraph two authorises the Council, acting on a Commission proposal, to adopt the necessary consequential and transitional arrangements. Sub-paragraph three authorises the Council, again acting on a Commission proposal, to determine any direct financial consequences to be borne by the UK which are a necessary and unavoidable consequence of the UK's decision to opt out.

2.21 The Government has determined that, subject to a vote in both Houses of Parliament, it is in the UK's national interest to rejoin 35 of the measures which would otherwise cease to apply on 1 December 2014. These 35 measures are listed in Command Paper 8897. Article 10(5) of Protocol 36 sets out the procedures for rejoining these measures and provides that, in applying them, the UK and EU institutions must "seek to re-establish the widest possible measure of participation of the UK in the *acquis* of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence".

The first draft Council Decision — document (a)

2.22 The draft Council Decision consists of two Articles. Article 1 makes reference to provisions contained in the second draft Council Decision — document (b) — which establish a series of deadlines for the UK to undertake and complete a full business and implementation case for rejoining three Prüm-related EU measures by 31 December 2015 (see below for further details). If the UK fails to meet any of these deadlines, or decides not to rejoin the three Prüm-related EU measures, then it shall "repay to the budget of the European Union the sums received under the Programme 'Prevention of and Fight against Crime' up to €1,508,855". Article 2 stipulates that the Council Decision shall enter into force on 1 December 2014.

2.23 The UK is entitled to take part in the vote (by qualified majority) on this draft Council Decision.

2.24 The Commission’s explanatory memorandum accompanying the draft Council Decision notes that the UK has received a specific allocation of funding from the Programme ‘Prevention and Fight against Crime’ covering the period 2007–13 for two projects to support the implementation of the Prüm Decisions in the UK, the first concerning the exchange of DNA, the second fingerprint evaluation. The sum of €1,508,855 corresponds to the maximum amount of EU funding the UK is entitled to receive from the Programme. The Commission makes clear that, in the event that the UK decides not to participate in the three Prüm-related EU measures or fails to comply with the timetable envisaged for completing the business and implementation case, it will be required to repay the amount of EU funding actually received, up to a maximum of €1,508,855.

The second draft Council Decision — document (b)

2.25 This draft Council Decision would take effect a day earlier, on 30 November 2014. It provides, in Article 1, that the 35 measures the UK wishes to rejoin (reproduced in an Annex to the Decision) shall continue to apply to the UK until **7 December 2014**.

2.26 Article 2 requires the UK to “undertake a full business and implementation case to assess the merits and practical benefits” of opting back into three Prüm-related EU measures. These are Council Decisions 2008/615/JHA and 2008/616/JHA, and Framework Decision 2009/905/JHA. The two Council Decisions provide for enhanced cross-border cooperation between national law enforcement authorities responsible for the prevention and investigation of criminal offences, including the automated exchange of DNA profiles, fingerprint and vehicle registration data. The Framework Decision requires the accreditation of forensic service providers who undertake DNA profiles and fingerprinting analysis to a common international standard. It is intended to facilitate the mutual recognition of test results and analyses across the EU. Work on the business and implementation case must commence **within 10 days** of the Decision entering into force (on 30 November 2014) and comply with the following timetable:

- publication of the results by **30 September 2015** at the latest;
- a decision by **31 December 2015** on whether or not to opt into the measures, if the business and implementation case is positive; and
- notification of the UK’s decision to the Council **within four weeks from 31 December 2015**.

2.27 In carrying out the business and implementation case, the Government is required to consult closely with operational partners in the UK, and with the Commission, Europol, Eurojust and other Member States.

2.28 Article 3 of the draft Decision precludes the UK from accessing, for law enforcement purposes, fingerprint data held in the Eurodac database until such time as it rejoins the three Prüm-related EU measures. The provision for law enforcement access is contained in a 2013 Regulation establishing Eurodac and takes effect on 20 July 2015.²⁰ Article 20 of the

²⁰ See Regulation (EU) No. 603/2013, in particular recital 32 and Article 20.

Regulation only allows designated national law enforcement authorities to request a fingerprint comparison with data stored in the Eurodac database if they have already undertaken an automated check under the Prüm system (specifically, under Decision 2008/615/JHA). The Commission makes clear that this limitation on UK access to Eurodac for law enforcement purposes does not affect UK participation in all of the other elements of Eurodac, notably to support the implementation of the Dublin system for determining the Member State responsible for handling an asylum application.²¹

2.29 Article 4 deals with the consequences of a failure on the part of the UK Government to rejoin the three Prüm-related EU measures within the envisaged timetable. It requires the Commission to “submit a report to the European Parliament and to the Council on the effects of the non-participation of the UK” in these measures.

2.30 The UK is not entitled to take part in the vote (by qualified majority) on this draft Council Decision.

2.31 In its explanatory memorandum accompanying the draft Council Decision, the Commission observes:

“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.”²²

2.32 The Commission says that the requirement to undertake a business and implementation case to assess the merits and practical benefits of UK participation in the three Prüm-related EU measures stems from their “practical and operational significance [...] for public security, and more particularly for law enforcement and the prevention, detection and investigation of criminal offences”. It also notes that, before making a decision to rejoin these measures, “the United Kingdom has indicated that a positive vote in its Parliament will be required”.²³

The Government’s Explanatory Memoranda of 3 November 2014

2.33 The Minister (Karen Bradley) provides separate Explanatory Memoranda for each of the draft Council Decisions. She explains that the Government has reached an ‘in principle’ deal with the Commission to rejoin 29 non-Schengen measures and is “close to reaching agreement” with the Council to rejoin six Schengen measures. Two Member States have now lifted their technical reserves on the Schengen measures and discussions are continuing on the one technical reserve that remains.²⁴ In order to rejoin the package of 35 measures, the Minister indicates that secondary legislation will be required.

21 See p.3 of the Commission’s explanatory memorandum accompanying the draft Decision.

22 See p.3 of the Commission’s explanatory memorandum.

23 See recital 9 to the draft Decision and pp.3–4 of the Commission’s explanatory memorandum.

24 See para 3 of both of the Minister’s Explanatory Memoranda.

2.34 Turning first to document (a) addressing the financial consequences of the UK’s block opt-out decision, the Minister notes that the draft Decision concerns three measures — Council Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2009/905/JHA — which are referred to collectively as the ‘Prüm Decisions’. She continues:

“The Government has been clear throughout this process that it has neither the time, nor the money to implement the Prüm Decisions by 1 December. As a result the Government is not seeking to rejoin the Prüm Decisions. However, UK law enforcement and other Member States have stated that the measure could bring benefits in the fight against serious cross-border crime. In order to assess this fully the Government has agreed to produce a business and implementation case and run a small-scale pilot, with all necessary safeguards in place. This will be published by way of a Command Paper next year and a vote will be held in Parliament to determine the UK’s participation or otherwise.”²⁵

2.35 The Minister explains that the UK has been allocated a maximum of €1,508,855 in EU funding from the Specific Programme ‘Prevention and Fight Against Crime’ to “explore the implementation of the Prüm DNA Exchange and facilitate the Prüm Fingerprint Evaluation Project”. She adds:

“Article 10(4) of Protocol 36, third subparagraph, states that the Council may determine the direct financial consequences necessarily and unavoidably incurred as a result of the UK decision to exercise its opt-out. The Government considers that this test sets an extremely high threshold. Nevertheless, the Government accepts that funding received to explore the implementation of any of the Prüm Decisions falls within the test set out in the Protocol. The Government also accepts that should the UK decide not to opt-into relevant Prüm Decisions or does not respect the deadlines set out in COM (2014) 596 (13680/14) final [document (b)] that it is required to repay the sums actually received under the ‘Prevention and Fight Against Crime’ Programme.”²⁶

2.36 The Minister makes a number of technical comments on the drafting of the draft Decision, as follows:

- Recital (5) should reflect the wording of the third sub-paragraph of Article 10(4) of Protocol 36 by referring to the “direct” financial consequences of the UK’s block opt-out decision;
- Recital (8) and Article 1 should include a cross-reference to Article 2 (not Article 1) of the second draft Decision — document (b); and
- The reference to the Specific Programme ‘Prevention of and Fight Against Crime’ in footnote 10 should include the appropriate inverted commas.

25 See para 18 of the Minister’s Explanatory Memorandum on the first draft Council Decision — document (a).

26 See paras 19–20 of the Minister’s Explanatory Memorandum on document (a).

2.37 She also considers that there are “inaccuracies in relation to certain references to Framework Decision 2009/905/JHA in relation to funding received”.²⁷

2.38 The Minister explains, in relation to the second draft Decision — document (b) — on consequential and transitional arrangements that it is based on “the wide power” conferred by Article 10(4), second sub-paragraph. She adds:

“Its objective is to make the best provision for protecting public security in the EU and to avoid any operational issues as a result of the UK leaving all instruments on 1 December 2014 and seeking to rejoin the 35 measures set out in the associated Annex [to the draft Decision].”²⁸

2.39 She notes that recital (4) to the draft Decision is incomplete, pending formal notification that the UK intends to seek to rejoin the 35 measures listed in the Annex which replicate those contained in Command Paper 8897:

“The intention is that those details are completed once the UK’s formal notification to seek to rejoin measures it has opted out of has been sent. This makes clear that the proposal cannot be adopted in this form until the UK has sent its formal notification. This is an important reference as it ensures that the decision on whether the UK rejoins any measures is the UK’s alone and that the proposal is simply an ‘in principle draft’ until such a notification is received.”²⁹

2.40 Turning to the main provisions of the draft Decision, the Minister first explains the purpose of Article 1:

“Article 1 [...] sets out that the listed acts in the associated Annex shall continue to apply to the UK until 7 December 2014. The list in the associated Annex is the list that the UK has agreed ‘in principle’ with the Commission and almost all other Member States. This list is the same list that is set out in Command Paper 8897. Therefore in the event that the UK formally notifies its wish to rejoin those 35 acts, they will be kept in force, for a specified and limited time, until 7 December 2014 to enable the appropriate procedures to be undertaken for the UK to formally rejoin them without any gap in legal or operational coverage. The Government accepts the rationale for the Commission’s proposal in order to put beyond doubt, under the domestic legal systems of some Member States, that there is no gap in legal or operational coverage, even of a split second.”³⁰

2.41 The remaining Articles deal with the consequences of the UK’s non-participation in three Prüm-related measures:

“The Home Secretary set out in July the UK’s commitments to a business and implementation case on Prüm followed by a vote. These features are reflected in the proposal.

27 See para 21 of the Minister’s Explanatory Memorandum on document (a).

28 See para 10 of the Minister’s Explanatory Memorandum on document (b).

29 See para 11 of the Minister’s Explanatory Memorandum on document (b).

30 See para 19 of the Minister’s Explanatory Memorandum on document (b).

“As a consequence of not rejoining these measures, the UK will not have access, for law enforcement purposes, to the Eurodac database set up under Regulation (EU) No 603/2013, once it applies from 20 July 2015. This is because of the drafting of that Regulation and is added for clarification in Article 3. Finally, Article 4 sets out, that if the UK does not notify the Commission that it wishes to rejoin the Prüm Decisions within 4 weeks of 31 December 2015, the Commission will transmit a report on the effects of non-participation to the European Parliament and to the Council.

“The proposal largely reflects the position agreed in principle by the UK and the Commission that was set out to Parliament by the Government on 10 July 2014 and ensures that it will be legally binding once adopted, in the event that the UK notifies that it wishes to rejoin the measures set out in the associated Annex. The Government considered it sensible to agree these procedural matters in principle in order to facilitate a smooth transition from 1 December 2014.”³¹

2.42 The Minister indicates that “there is no specific timetable envisaged” for the draft Decisions, but that both must be agreed before 1 December 2014 and that document (b) on consequential and transitional arrangements is intended to enter into force on 30 November 2014.³²

Previous Committee Reports

None, but the following Reports of the European Scrutiny, Home Affairs and Justice Committees are relevant: Thirty-seventh Report [HC 798](#) (2012–13), 22 March 2013; Eighth Report [HC 605](#) (2013–14), 31 October 2013; Ninth Report [HC 615](#) (2013–14), 31 October 2013; Twenty-first Report [HC 683](#) (2013–14), 7 November 2013; First Joint Report from the European Scrutiny, Home Affairs and Justice Committees [HC 1177](#) (2013–14), 26 March 2014; Seventeenth Report [HC 762](#) (2014–15), 4 November 2014. See also the following Reports of the European Union Committee in the House of Lords: Thirteenth Report [HL Paper 159](#) (2012–13), 23 April 2013; Fifth Report [HL Paper 69](#) (2013–14), 31 October 2013.

31 See paras 23–25 of the Minister’s Explanatory Memorandum on document (b).

32 See paras 25 and 29 of the Minister’s Explanatory Memoranda.

Formal minutes

Wednesday 5 November 2014

Members present:

Jacob Rees-Mogg

Mr James Clappison
Michael Connarty
Nia Griffith
Kelvin Hopkins

Chris Kelly
Henry Smith
Mr Michael Thornton

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 2.9 read and agreed to.

Paragraph 2.10 read, amended and agreed to.

Paragraphs 2.11 to 2.42 read and agreed to.

Resolved, That the Report be the Nineteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Tuesday 19 November at 2.00pm.]

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

Sir William Cash MP (*Conservative, Stone*) (Chair)
Andrew Bingham MP (*Conservative, High Peak*)
Mr James Clappison MP (*Conservative, Hertsmere*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)
Geraint Davies MP (*Labour/Cooperative, Swansea West*)
Julie Elliott MP (*Labour, Sunderland Central*)
Stephen Gilbert MP (*Liberal Democrat, St Austell and Newquay*)
Nia Griffith MP (*Labour, Llanelli*)
Chris Heaton-Harris MP (*Conservative, Daventry*)
Kelvin Hopkins MP (*Labour, Luton North*)
Chris Kelly MP (*Conservative, Dudley South*)
Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)
Jacob Rees-Mogg MP (*Conservative, North East Somerset*)
Mrs Linda Riordan MP (*Labour/Cooperative, Halifax*)
Henry Smith MP (*Conservative, Crawley*)
Mr Michael Thornton MP (*Liberal Democrat, Eastleigh*)

The following members were also members of the committee during the parliament:

Mr Joe Benton MP (*Labour, Bootle*)
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)
Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)

Penny Mordaunt MP (*Conservative, Portsmouth North*)
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)
Ian Swales MP (*Liberal Democrat, Redcar*)