



House of Commons
European Scrutiny Committee

**Cross-border law
enforcement
cooperation — UK
participation in Prüm**

Twelfth Report of Session 2015–16

*Report, together with formal minutes
relating to the report*

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The European Scrutiny Committee

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Contents

Introduction	3
Section One	4
Assessment	4
The rationale for participating in Prüm	5
Adequacy of safeguards	5
Data protection	8
Jurisdiction of the Court of Justice	8
Contribution to combating cross-border crime	9
Oversight of Prüm	11
Cost	11
The viability of alternatives to Prüm	12
Section Two	13
The Prüm package	13
The first Prüm Decision—Council Decision 2008/615/JHA	13
The second Prüm Decision—Council Decision 2008/616/JHA	14
The third Prüm measure—Framework Decision 2009/905/JHA	15
Why is the UK not bound by the Prüm measures?	15
Why is the Government considering rejoining the Prüm measures?	18
Section Three	23
The Government’s Business and Implementation Case	23
Option One—Do nothing, maintain the status quo	23
Option Two—Fully implement Prüm	25
Option Three—Alternatives to Prüm	31
The Command Paper	32
Appendix—Correspondence between Home Office Ministers and the European Scrutiny Committee	33
Formal Minutes	41
List of Reports from the Committee during the current Parliament	42

Introduction

1. The purpose of this Report is to inform the debate and vote in Parliament on UK participation in three EU measures which are intended to strengthen cross-border cooperation on terrorism and serious crime. The measures comprise two so-called “Prüm Decisions”, which establish a framework for the automated exchange of information on DNA profiles, fingerprints and vehicle registration data, and a Framework Decision providing for the accreditation of forensic laboratories carrying out activities involving DNA profiles and fingerprint data. Together, these three measures form the “Prüm package”. The measures were adopted before the Lisbon Treaty entered into force, on 1 December 2009, and were binding on all EU Member States, including the UK. All three ceased to apply to the UK on 1 December 2014, the date on which the UK’s “block opt-out” of a number of pre-Lisbon EU police and criminal justice measures took effect.

2. The Government published a Business and Implementation Case on 30 September analysing “the potential practical benefits, the potential negative impacts and the steps that would be necessary” if the UK were to seek to rejoin the Prüm package. This was followed, on 26 November, by Command Paper 9149 which concludes that “it would be in the national interest for the UK to seek to rejoin Prüm”.

3. The need for close cooperation is not in doubt, as the recent terrorist attacks in Paris demonstrate. The scale of the atrocity and the effectiveness of the law enforcement response inevitably form part of the wider context in which the decision on UK participation in Prüm will be taken. Increasingly, terrorism and other serious crime has a cross-border dimension, accentuated by the dismantling of internal border controls within the Schengen free movement area and ease of travel and communication within the European Union. Important questions for Parliament include whether UK participation in Prüm:

- can make a positive contribution to the prevention, investigation and detection of crime without exposing individuals to the risk of false incrimination or unwarranted interference with their right to privacy;
- represents a loss of Parliamentary sovereignty, in practice, over vital issues of internal security and justice and home affairs matters; and
- results in an unacceptable acquiescence in the jurisdiction of the Court of Justice of the European Union.

4. Given the legal and political importance of these issues, it is essential that Parliament has the opportunity to consider them in depth by means of a full and proper debate on the floor of the House.

5. In Section One of this Report, we provide a preliminary assessment of the evidence presented in the Government’s Business and Implementation Case, highlighting elements on which Members may wish to seek further information or explore in greater detail in the debate. For those seeking more detail, Section Two sets out the background, explaining what the Prüm package is, why the UK is no longer bound by it, and why the Government is now recommending that the UK should seek to participate. Section Three summarises the main findings of the Government’s Business and Implementation Case and the recommendation made in Command Paper 9149 to participate in Prüm.

Section One

Assessment

6. The Government’s Business and Implementation Case¹, and accompanying Annexes, provide the information on which the Government’s recommendation to participate in Prüm is based. They are reproduced in Command Paper 9149.² The page references in the following paragraphs and footnotes are to the relevant pages of the Command Paper.

7. The Business and Implementation Case explores three options which are available to the Government:

- Option One—Do nothing, maintain the status quo.
- Option Two—Fully implement Prüm.
- Option Three—Seek alternatives to Prüm.

8. The key points for each option are summarised in Section Three of this Report.

9. Option One of the Business and Implementation Case makes clear that the UK is already able to share DNA profiles, fingerprints and vehicle registration data with its international partners through existing Interpol processes, but indicates that there is some reluctance to do so. It highlights the low volume of transactions through Interpol and suggests that this may be attributed to “often poorly defined and cumbersome” processes, as well as unpredictable response times.³

10. There seems little doubt that UK participation in Prüm would increase the exchange of DNA profiles, fingerprints and vehicle registration data with other EU Member States. The evidence presented by the Government in Option Two of the Business and Implementation Case indicates that the process itself is more efficient, being wholly (for vehicle registration data) or partially (for DNA profiles and fingerprints) automated and subject to strict response times, and that this would make Prüm a much more useful operational tool for the police working on real time investigations. The Government suggests that the potential policing benefits are considerable, and that there could be benefits, too, for innocent individuals if a Prüm search enables them to be eliminated from police investigations more quickly. In Option Three, the Government dismisses the practicability of securing more effective information exchange mechanisms with other EU Member States outside the Prüm framework.

11. In weighing the risks and benefits of each Option, much will depend on the adequacy and the negotiability of the safeguards which the Government says it intends to secure as a condition for UK participation in Prüm, as well as the broader issue concerning the implications for Parliamentary sovereignty. In the following paragraphs, we examine the evidence set out in the Business and Implementation Case and identify a number

1 The [Prüm Business and Implementation Case and Annexes](#).

2 There has been a small element of updating between publication of the Business and Implementation Case on 30 October and the Command Paper on 26 November. The only significant change is to the Prüm Pilot Results Table (pp.37-45 of the Command Paper) to include the latest information on the operational status of DNA exchanges resulting in hits.

3 See p.24 of Cm 9149.

of issues and concerns on which Members may wish to seek further information from the Government or explore in greater detail during the forthcoming debate on UK participation in Prüm. Our observations are highlighted in bold.

The rationale for participating in Prüm

12. In Command Paper 8671 on EU police and criminal justice measures which were subject to the UK's 2014 block opt-out, published in July 2013, the Government expressed concern that:

“Prüm’s current technical requirements are out of date and that it would be better to see whether there is a more modern solution that allows better exchange of information, for example producing fewer false positives or requiring less human intervention.”⁴

13. Our understanding is that Prüm’s technical requirements have not changed since the Decisions were adopted in 2008, although the Council agreed a non-binding Resolution in 2009 encouraging Member States to implement a new European Standard Set which increases the number of loci or DNA markers from seven to twelve.⁵ **The Business and Implementation Case does not explain whether or how the previous Government’s concerns have been resolved or set out the factors since July 2013 which have prompted a change of policy on UK participation in Prüm.**

Adequacy of safeguards

14. The Government intends to implement the following safeguards:

- Member States will only be allowed to search the DNA profiles or fingerprints of individuals who have been convicted in the UK.
- To reduce the risk of adventitious matches, the UK will (i) only share crime scene profiles with other Member States which have more than eight loci, and (ii) will only routinely release personal (demographic) information on individuals in its DNA database where 10 or more loci match.
- Apply a proportionality test so that personal information following a hit is not sent to another Member State if the offence being investigated is not sufficiently serious.
- Require a formal Letter of Request for the release of personal information relating to minors, following a verified hit.

15. The first safeguard appears to be consistent with the principle that it is for each Member State to determine which of its DNA analysis files it intends to make accessible to other Member States and to specify the conditions governing automated searches.⁶ The Business and Implementation Case indicates that DNA and fingerprint databases in England and Wales, Scotland and Northern Ireland also include DNA profiles and latent fingerprint marks of individuals who have not been convicted of an offence, although

4 See p.107 of [Command Paper 8671](#).

5 See [Council Resolution on the exchange of DNA analysis results](#).

6 See Article 2(3) of Council Decision 2008/615/JHA, p.87 of Cm 9149.

the criteria for inclusion vary between jurisdictions.⁷ **The robustness of this safeguard depends on being able to ensure that Prüm searches only involve the DNA profiles and fingerprints of those who have been convicted of an offence, and exclude those who have not been convicted. Further information on the technical or other means for differentiating between conviction and non-conviction DNA profiles and fingerprints for the purpose of Prüm searches would provide greater assurance about the adequacy of this safeguard.**

16. The second safeguard also appears to be achievable. The Business and Implementation Case states that Prüm only requires Member States to report a match of six or more loci as a hit, but does not require them to exchange personal data in relation to that hit:

“It is possible for the UK, as has been the case with other countries, to provide personal data only if the number of loci is sufficient for there to be a very high probability indeed that the hit is a true one. For the UK this would be 10 loci, i.e. we would only provide personal data if there was a 10 loci or more match. In doing this, the UK would be taking the same route as almost all countries which currently routinely discard 6 or 7 loci hits in relation to profiles they have sent and refuse to provide personal details in relation to 6 or 7 loci hits. The larger number of profiles held on the UK’s National DNA Database requires a higher number of loci to match for the hit to be guaranteed to be a true one.”⁸

17. In addition, the Government says that it would only routinely release personal (demographic) information on individuals held in the UK’s DNA database where 10 or more loci match, but does not rule out “further work on ‘weaker’ hits in order to try and increase the number of matching loci or the sharing of specific intelligence, particularly for more serious crimes which are under investigation” for matches with fewer than 10 loci.⁹ This raises two concerns. First, the draft legislation to implement Prüm, reproduced in Annex J to the Business and Implementation Case, contains a clear prohibition on the supply of personal data for matching DNA profiles which do not include ten or more matching loci—there is no provision for this prohibition to be dis-applied in the circumstances described in the Business and Implementation Case. **The Government should clarify whether any exceptions are envisaged to the general rule that personal data should only be shared following a hit where there are 10 or more matching loci. If any exceptions are envisaged, the Government should explain what they are and the circumstances in which they may be justified, as well as the oversight mechanisms which it will put in place to ensure that they are properly applied. This is important because DNA exchanges under Prüm apply, in principle, to the investigation of any criminal offence, so there is no obvious threshold to distinguish between “routine” and non-routine requests.**

18. A second concern is that the measures the Government proposes to put in place to implement the Prüm provisions on the exchange of DNA profiles do not appear to replicate all of the safeguards built into the pilot project. For example, the exchange of crime scene profiles during the pilot was limited to those with “high probative value”, such as “blood, semen or saliva left on an intimate area on a victim”, and which were “deemed to have originated from a single source of DNA, as opposed to being from a

7 See pp.17–20 of Cm 9149.

8 See p.66 of Cm 9149.

9 See p.50 of Cm 9149.

crime scene profile containing DNA from more than one person”.¹⁰ In addition, all hits were subject to independent scientific verification and, in some cases, re-profiling using a different DNA profiling kit, to confirm or eliminate a match before exchanging personal data. **Whilst the requirement for eight loci for crime scene profiles and ten matching loci for person or subject profiles exceeds the minimum standards permitted under Prüm, the Government should explain why the other safeguards included in the pilot no longer form part of its Prüm implementation plan.**

19. The third safeguard seeks to import a proportionality test to ensure that UK law enforcement authorities are not under any obligation to provide personal information, following a hit, for minor offences. As the Business and Implementation Case makes clear, “the volume of exchange must be managed carefully, as if the workload increases significantly, and the resources allocated cannot cope with the demand, the system will not work as efficiently as it currently does”.¹¹ This safeguard also appears to be achievable. Prüm specifies that national law governs follow-up requests for personal information, following a hit, and the draft legislation to implement Prüm proposed by the Government makes clear that there is no obligation to supply personal data.

20. The Business and Implementation Case sets out the legislative changes which have been made in the UK to introduce a proportionality test when considering extradition requests based on a European Arrest Warrant. These legislative changes have been supplemented by an “administrative proportionality test” (carried out by the National Crime Agency) which draws on guidance issued by the Lord Chief Justice (in agreement with his counterparts in Scotland and Northern Ireland) setting out categories of offences for which, unless there are exceptional circumstances, extradition should be considered disproportionate. **The Government should explain whether it intends to produce similar guidance for the supply of personal data following a hit against the UK’s DNA or fingerprint databases in order to ensure a degree of certainty, predictability and transparency in how the proportionality test is being applied.**

21. We foresee no difficulty in applying the fourth safeguard in relation to minors, given that the Prüm Decisions envisage that requests for personal (demographic) information following a hit or match are governed by national law, including legal assistance rules which may require a formal Letter of Request.

22. Whilst the safeguards set out in the Business and Implementation Case are to be welcomed, the adequacy and stringency of the standards proposed for DNA profiles, particularly in relation to the minimum number of loci, require a detailed understanding of the underlying science. **We consider that the views of the Information Commissioner and the Biometrics Commissioner are therefore of paramount importance in assessing the package being put to Parliament for consideration, and ensuring that it can command public confidence. We would welcome further information on their involvement in the process so far and any views they have expressed on the Government’s recommendation to participate in Prüm on the basis set out in the Business and Implementation Case.**

23. As our analysis indicates, it seems likely that the Government will be able to implement the safeguards it proposes on a unilateral basis. Whilst this provides some reassurance for individuals whose DNA profiles or fingerprints are held on the relevant

¹⁰ See p.35 of Cm 9149.

¹¹ See p.55 of Cm 9149.

UK databases, it does not address wider concerns about the overall operation of Prüm and inconsistencies in the standards being applied across all participating Member States. This could also affect British citizens if their fingerprints or DNA profiles are held by another Member State applying a lower standard consistent with the minimum requirements specified in the Prüm Decisions. The Business and Implementation Case states that “many Member States’ DNA profiles are now stored using the new European Standard Set (ESS) of loci” and that “there are diminishing percentages of profiles with fewer than 10 loci”, thereby reducing the risk of false positives.¹² **Given this convergence towards a higher set of standards, the Government should explain whether it intends to press for more robust standards and safeguards to be formally incorporated in the Prüm Decisions themselves, ensuring a more uniform application across all EU Member States.**

Data protection

24. The Business and Implementation Case describes the specific data protection rules which form part of Prüm. They include a requirement to log every non-automated supply and receipt of personal data “in order to verify the admissibility of the supply” and to record each automated supply and receipt of personal data. Responsibility for verifying the legality of any exchanges would rest with the UK’s Information Commissioner and Biometrics Commissioner.¹³

25. Negotiations are currently underway on a new EU data protection framework. In October, the Council agreed a general approach on the proposed Directive on the protection of personal data processed for the purposes of preventing, investigating detecting or prosecuting criminal offences.¹⁴ Whilst the text may be amended following trilogue negotiations with the European Parliament, it currently provides that the Directive will not affect the data protection provisions of existing EU police and criminal justice measures, such as Prüm. It also provides for a review, within five years of the entry into force of the Directive, to assess the need to amend these earlier measures to bring them into line with the Directive and ensure a consistent approach. **A single, coherent data protection regime for all EU police and criminal justice measures has obvious attractions. We consider that the Government could helpfully provide further information on the main differences between the Prüm data protection rules and those recently endorsed by the Council for other EU police and criminal justice measures, and indicate whether it would support a more uniform approach.**

Jurisdiction of the Court of Justice

26. Option One (“Do Nothing/Maintain the Status Quo”) is the only option considered in the Business and Implementation Case which would ensure that “the UK would not be required to cede further jurisdiction on these matters to the European Court of Justice”.¹⁵ In Option Three (“Alternatives to Prüm”), the Government questions the legal or political feasibility of securing Prüm-type arrangements with other EU Member States outside the existing Prüm framework and suggests that, even if this could be achieved, the UK might still be bound to accept the jurisdiction of the Court of Justice.

12 See p.50 of Cm 9149.

13 See p.64 of Cm 9149.

14 See the Council’s [press release](#) and Articles 59 and 61(2) of the [Council’s general approach](#).

15 See p.24 of Cm 9149.

27. Option Two (“Fully Implement Prüm”) recognises that acceptance of the Court’s jurisdiction is an inevitable consequence of participating in Prüm and that it is “not risk free [...] because the CJEU can rule in unexpected and unhelpful ways”. Despite this, the Government draws a distinction between law enforcement cooperation measures, such as Prüm, and substantive criminal law measures, noting that the latter are “open to wide interpretation” and a greater risk of competence creep.¹⁶

28. The Prüm package is a legacy of the UK’s 2014 block opt-out decision. The implications of accepting the Court’s jurisdiction over a range of EU police and criminal justice measures was one of the main issues in determining the measures the then Government wished to rejoin. At the time, the Government made clear that “in certain cases, it will be in the national interest for the UK to participate and the Government will accept that risk given the wider benefits of the instrument in question”.¹⁷ In its Report on the UK’s 2014 block opt-out decision, the European Scrutiny Committee stated that “the Government’s reasons for concluding that the wider benefits of participation outweigh the risks, and are in the national interest, need to be transparent and open to scrutiny by Parliament” and suggested that the issue required further detailed consideration.¹⁸ **The Business and Implementation Case recognises that there are risks inherent in accepting the jurisdiction of the Court of Justice but does not fully explore how extensive they are, or what impact they could have, on the operation of Prüm. A more detailed analysis would assist Parliament in weighing the risks against the potential benefits of UK participation in Prüm. So, too, would a clear explanation by the Government of the areas in which the UK would be accepting exclusive EU competence by virtue of participating in Prüm.**

Contribution to combating cross-border crime

29. Information provided in the Business and Implementation Case and in the UK Biometrics Commissioner’s Annual Report for 2014 both demonstrate that there is limited international exchange of DNA profiles and fingerprints under the existing Interpol processes. The Annual Report explains that DNA profiles are usually exchanged in the hope of identifying the perpetrator of a crime, whereas fingerprints are usually exchanged to confirm identity. According to the Biometrics Commissioner:

- Nine DNA person/subject profiles were sent abroad between January 2013 and September 2014.
- DNA person/subject profiles are received at a rate of approximately 2 per month.
- DNA crime scene profiles are sent to other countries at a rate of around 4 per month.

16 See p.52 of Cm 9149. Although not mentioned in the Business and Implementation Case, Article 276 of the Treaty on the Functioning of the European Union provides that the Court “shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.”

17 See para 82 of our Report, *The UK’s block opt-out of pre-Lisbon criminal law and policing measures*, Twenty-first Report (2013–14), HC 683.

18 See para 84 of our Report, *The UK’s block opt-out of pre-Lisbon criminal law and policing measures*, Twenty-first Report (2013–14), HC 683.

- DNA crime scene profiles are received from other countries at a rate of around 30 per month.
- Outbound fingerprint requests are processed at a rate of around 75 per month.
- Inbound fingerprint requests are received at a rate of around 4 per month.
- Requests to send crime scene fingerprints to other countries are rare—fewer than one a month.
- Inbound requests to search crime scene fingerprints against the UK’s fingerprint database are received at a rate of around 2 per month.¹⁹

30. A far higher volume of exchanges is likely if the UK participates in Prüm because there is no restriction according to the gravity of offence—the automated searching and comparison of DNA profiles and fingerprints potentially applies to the investigation of any criminal offence—and because at least part of the process is automated, yielding results within much quicker mandatory response times.²⁰ In addition, the Government considers that there is no realistic alternative to Prüm for the bulk exchange of DNA profiles.²¹

31. The Business and Implementation Case sets out the benefits of Prüm, in terms of ease, volume and speed, but acknowledges that the pilot involving the UK, France, Germany, the Netherlands and Spain “only yielded a relatively small number of hits”.²² One explanation is that only a small proportion of the crime scene profiles contained in the UK’s national DNA database (NDNAD) was exchanged as part of the pilot. As a consequence, “scaling up from the pilot results to predict the results of searching all 170,000 unmatched crime scene profiles held on the NDNAD against the Prüm database can only be regarded as speculative”.²³

32. More significantly, there is no formal mechanism to evaluate Member States’ implementation of Prüm or its overall impact on the prevention and investigation of crime. As the Business and Implementation Case notes:

“The Prüm statistical package does not analyse follow-up work. Even if it did, there is no method, other than individual analysis of each case, to discover whether the hit was evidential or provided a useful investigatory lead or not.”²⁴

33. For this reason, the Business and Implementation Case is only able to provide anecdotal evidence of cases in which Prüm has been instrumental in advancing an investigation or securing a conviction. It also refers to a report (not yet published) containing the findings of a UK Prüm DNA Evaluation Project which makes a number of important recommendations. We highlight two which are pertinent in this context:

- The Business and Implementation Case being prepared for consideration by the UK Parliament should contain a Privacy Impact Evaluation concerning the exchange of DNA data through Prüm; and

19 See pp.92-94 of the Biometrics Commissioner’s [Annual Report for 2014](#).

20 See p.28 of Cm 9149 — 10 seconds for vehicles, 15 minutes for DNA and 24 hours for fingerprints.

21 See p.25 of Cm 9149.

22 See p.46 of Cm 9149.

23 See p.46 of Cm 9149.

24 See p.58 of Cm 9149.

- If the UK participates in Prüm, the Government should develop “suitable automated means” for capturing “performance data” following a hit or match.²⁵

34. **The paucity of evidence on the outcome of Prüm exchanges is troubling, making it difficult to measure the “added value” of Prüm and to ensure that an appropriate balance is being struck between the public interest in the prevention, investigation and detection of crime and the individual’s right to privacy. Members may wish to ask when the Government will publish the findings of the UK Prüm DNA Evaluation Project and which of its recommendations the Government intends to implement. Similarly, the Government should explain why it has not produced a Privacy Impact Evaluation as part of its Business and Implementation Case and when it will do so.**

35. **We consider that the Government should provide further information on the processes it intends to put in place to ensure that the value and impact of Prüm can be properly assessed, both in terms of its contribution to the prevention and investigation of crime and any detrimental impact on individuals (notably the prevalence of adventitious matches). This is necessary to ensure that the Prüm arrangements are both effective and proportionate. Information on Prüm implementation and outcomes should be made publicly available and subject to regular evaluation. We would like to see this reflected in the draft legislation proposed by the Government to implement Prüm.**

36. **There is an equally strong case for incorporating an effective evaluation mechanism within the existing Prüm requirements, not least to enhance transparency and accountability. Should Parliament endorse the Government’s recommendation to participate in Prüm, we consider that the possibility of introducing a suitable mechanism to provide tangible and verifiable, rather than anecdotal, evidence on Prüm outcomes should be a priority in discussions with other Member States and the Commission on the terms of UK participation.**

Oversight of Prüm

37. **The Business and Implementation Case says that the UK’s Information Commissioner and Biometrics Commissioner will be responsible for auditing UK compliance with Prüm. In light of our earlier comments, if Parliament endorses the Government’s recommendation to participate in Prüm, we expect the Government to consult fully with both Commissioners on domestic implementation, including the safeguards to be included in domestic law. We consider that their role should extend beyond simple compliance, to include a broader independent oversight function encompassing the operation and impact of Prüm, with a particular focus on maintaining an appropriate balance between the prevention and investigation of crime and the individual’s right to privacy.**

Cost

38. **In Command Paper 8671 on EU police and criminal justice measures subject to the UK’s 2014 block opt-out (published in July 2013), the previous Government noted that the original estimate given for implementing Prüm in 2007 was £31 million and suggested**

²⁵ See pp.56-8 of Cm 9149.

that this figure was likely to have increased since then.²⁶ The Business and Implementation Case now estimates the total IT cost as £13 million, plus as yet unspecified “downstream operational running costs” for the police, prosecutors, courts and the National Crime Agency. It suggests that the costs can be managed through a phased connection to Prüm and notes that none of the twenty-one Member States currently operating Prüm have experienced an over-burdening of their police or court systems.

39. The Business and Implementation Case explains that full implementation of Prüm can be delivered “as a phased or deferred option”, adding:

“This would defer some expenditure and allow for the introduction of Prüm requirements into the new strategic solutions for fingerprints and DNA profiles which are planned for the next few years.”²⁷

40. There is a very significant disparity in the cost estimates for implementing Prüm stated in the Government’s July 2013 Command Paper and in its Business and Implementation Case. We consider that this merits further explanation.

The viability of alternatives to Prüm

41. The Business and Implementation Case sets out two alternatives to Prüm, one based on an international agreement between the UK and the EU to implement Prüm-style arrangements, the other on bilateral agreements between the UK and other Member States. On the latter, the Government says that Member States “would need to decide whether they were competent to enter such agreements”. This is because, by virtue of their participation in Prüm, Member States have ceded competence to the EU. The Government also suggests that bilateral agreements would “remain subject to the jurisdiction Court of Justice”. **We would welcome a clearer statement of the Government’s position on whether it would be legally possible for other Member States to conclude a bilateral agreement with the UK and, if so, whether the agreements would necessarily be subject to the jurisdiction of the Court of Justice.**

42. **In light of our earlier comments on the implications of Prüm for Parliamentary sovereignty, we do not consider that the Government has thoroughly explored possible alternatives to Prüm. This is important because, if Parliament decides to reject the Government’s recommendation to participate in Prüm, viable alternatives will need to be found which allow Parliament to exercise its sovereignty over international law enforcement cooperation.**

²⁶ See p.106 of [Command Paper 8671](#), published in July 2013.

²⁷ See p.15 of Cm 9149.

Section Two

43. In this Section, we explain what the Prüm package is, why the UK is no longer bound by it, and the timing of the Government’s recommendation that the UK should seek to re-join Prüm.

The Prüm package

44. The two so-called “Prüm Decisions” derive from a Convention signed by seven EU Member States—Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria—in the German town of Prüm in 2005. The purpose of the Convention is to strengthen cross-border cooperation and the exchange of information to combat terrorism, cross-border crime and illegal migration more effectively.²⁸ It expressly contemplates that some or all of its provisions will be brought within the legal framework of the European Union.

45. In 2008, the Council adopted two Decisions—the first incorporating the main police and criminal law elements of the Prüm Convention, the second setting out detailed provisions on implementation.²⁹ A third measure—Council Framework Decision 2009/905/JHA on the accreditation of forensic service providers—also forms part of the Prüm package included in the Government’s Business and Implementation Case.³⁰

The first Prüm Decision—Council Decision 2008/615/JHA

46. The first Prüm Decision seeks to facilitate the exchange of information between law enforcement authorities responsible for the prevention and investigation of criminal offences. It contains specific rules and procedures regulating the automated searching and comparison of DNA profiles, fingerprint and vehicle registration data. There are also provisions on the exchange of information to prevent terrorism or to maintain public order and security in relation to major events with a cross-border dimension. Other forms of cross-border police cooperation are also envisaged. The Decision includes detailed rules on data protection.

DNA profiles

47. The Decision requires each Member State to establish a national DNA analysis file for the investigation of criminal offences and to make DNA profiles available to designated national contact points in other Member States who are authorised to carry out automated searches. The profiles may relate to an identifiable individual (DNA person or subject profiles) or to a crime scene (crime stain profiles). The initial automated search of DNA person profiles excludes personal (demographic) data—information that would identify a specific individual. The exchange of this information occurs at a later stage, once a hit or match has been verified, and has to be routed through the usual mutual legal assistance channels.³¹ A request for demographic data is governed by the relevant national legislation in the requested Member State.

28 See the full text of the [Prüm Convention](#) signed on 27 May 2005.

29 See [Council Decision 2008/615/JHA](#) and [Council Decision 2008/616/JHA](#).

30 See [Council Framework Decision 2009/905/JHA](#).

31 Mutual legal assistance (MLA) is generally used to request information relating to a criminal investigation or prosecution which cannot be obtained on the basis of police-to-police contacts. A formal Letter of Request is

48. Two safeguards are worth highlighting. First, it is for each Member State to identify which of its DNA analysis files are accessible to other Member States and to specify the conditions for automated searching. Second, automated searches may only be carried out in individual cases. However, on joining Prüm, a “bulk exchange” of DNA profiles is carried out against the entire Prüm database, although these searches can be staged (by Member State) and do not have to take place simultaneously.³²

49. In addition to automated comparison of DNA profiles, the Decision also provides for a DNA profile to be obtained from an individual present in another Member State, provided that the conditions for obtaining such a profile are fulfilled both in the requesting and the requested Member State.

Fingerprint and vehicle registration data

50. National contact points may similarly access anonymised reference data held in national automated fingerprint identification systems, and conduct searches in individual cases, for the purpose of preventing or investigating crime. They can also access national vehicle registration data relating to vehicles, their owners or operators, and conduct automated searches in individual cases, including for reasons of public security as well as for crime prevention or investigation.

Other forms of cross-border cooperation

51. The Decision makes provision for the exchange of personal and non-personal data relating to major events with a cross-border dimension (notably sporting events or European Council meetings) in order to prevent crime and maintain public order and security. Personal data may also be exchanged in individual cases, via national contact points, to prevent terrorist offences.

52. The Decision envisages additional forms of cross-border cooperation, including joint police operations and patrols, as well as mutual assistance to prevent crime and maintain public order and security at mass gatherings or major events, disasters or serious accidents. There are specific rules on the carrying and use of firearms, ammunition and equipment by law enforcement officers involved in a joint operation in another (host) Member State, as well as rules on criminal and civil liability.

The second Prüm Decision—Council Decision 2008/616/JHA

53. This second Decision contains detailed rules on the implementation of provisions concerning the automated exchange of DNA, fingerprint and vehicle registration data. In the case of DNA profiles, the Decision stipulates that a ‘hit’ or match resulting from an automated search or comparison must be based on a minimum number of DNA markers—loci—as specified in the European Standard Set (ESS) of loci. An Annex to the Decision further provides that “at least six full designated loci must match between both DNA profiles before a hit response is provided”, adding:

required which, in many cases, involves judicial authorities.

32 See the Statistical Study Report, included as Annex H to the Business and Implementation Case.

“A full match (Quality 1) is defined as a match, when all allele³³ values of the compared loci commonly contained in the requesting and requested DNA profiles are the same. A near match is defined as a match, when the value of only one of the compared alleles is different in the two DNA profiles (Quality 2, 3 and 4). A near match is only accepted if there are at least six full designated matched loci in the two compared DNA profiles.”³⁴

54. In the case of fingerprints, the Decision establishes a uniform data format for the digitalisation and transmission of fingerprint data. Member States are entitled to specify a maximum search capacity (quota) per day to ensure that they are not overwhelmed with requests for fingerprint comparisons. Requests should be processed within 24 hours by means of a fully automated procedure, and can be accelerated where necessary.

The third Prüm measure—Framework Decision 2009/905/JHA

55. The Framework Decision is intended to establish mutual trust in the quality and reliability of the systems underpinning the exchange of DNA profiles and fingerprint data. It requires accredited forensic service laboratories in each Member State to comply with relevant international standards and guidelines in order to ensure the integrity of DNA profiles and fingerprint data made available or sent for comparison to other Member States.³⁵

Why is the UK not bound by the Prüm measures?

56. The Prüm Decisions and the Framework Decision were adopted by the Council under the inter-governmental “Third Pillar” arrangements in force before the Lisbon Treaty took effect on 1 December 2009. This means that they were subject to the unanimous agreement of all Member States and, once adopted, were binding on all Member States.

57. The Lisbon Treaty gave the UK the right to decide not to participate in new EU police and criminal justice measures adopted after 1 December 2009. This right was deemed to be necessary by the then Government as all new post-Lisbon measures would be subject to the full jurisdiction of the Court of Justice and the Commission would be able to bring infringement proceedings against Member States if they failed to comply with them. Earlier, pre-Lisbon police and criminal justice measures (including the Prüm package) remained binding for all Member States but were subject to special transitional arrangements providing that they would only become subject to the full jurisdiction of the Court and Commission enforcement powers following the expiry of a five-year period ending on 30 November 2014.

58. The arrangements governing the five-year transitional period were set out in Protocol No.36 to the EU Treaties.³⁶ The Protocol included special provisions authorising the UK to opt out of all pre-Lisbon EU police and criminal justice measures (“the block opt-out”)

33 An allele is a gene that is found in one of two or more different forms in the same position in a chromosome and so produces a particular characteristic that can be different for different people, such as eye colour [from the Cambridge English Dictionary].

34 See Annex to Council Decision 2008/616/JHA, chapter 1, 1.2 on matching rules.

35 The relevant international standard is [ISO/IEC 17025](#) which specifies the management and technical requirements to be met by testing and calibration laboratories.

36 See [Protocol No.36 on transitional provisions](#) annexed to the EU Treaties.

and to opt back into individual measures which the Government considered to be in the UK's national interest.

59. On 9 July 2013, the Home Secretary (Mrs Theresa May) informed the House:

“For reasons of principle, policy and pragmatism, I believe that it is in the national interest to exercise the United Kingdom's opt-out, and rejoin a much smaller set of measures that help us to cooperate with our European neighbours in the fight against serious and organised crime. I also believe that Her Majesty's Government must strike the right balance between supporting law enforcement and protecting our traditional liberties.”³⁷

60. Whilst expressing the Government's support, in principle, for rejoining measures that “help us to cooperate with our European neighbours to combat cross-border crime and keep our country safe”, the Home Secretary added:

“We will not leave the UK open to the threat of infraction and fines which run into many millions of pounds by remaining bound by measures we simply cannot implement in time.”³⁸

61. Command Paper 8671, published in July 2013, contained Explanatory Memoranda on all of the measures subject to the UK's block opt-out decision, as well as a list of 35 measures which the Government said it would seek to rejoin.³⁹ The three measures forming part of the Prüm package were not included in the list of 35 measures.

62. In its comments on the Prüm Decisions, the Government explained that the UK had implemented the provisions on the supply of data and information relating to major events and the prevention of terrorist offences, as well as those concerning cross-border police cooperation and data protection. The UK had not met the deadline (26 August 2011) for implementing the provisions on automated searching of DNA profiles, fingerprint and vehicle registration data. The Government noted that implementing the necessary technical requirements was expected to take at least three years, adding:

“Software development is required and the costs are subject to change. The Government, in its original 2007 communications with Parliament, suggested that Prüm would cost £31 million to implement. This figure is likely to have increased since 2007. The Government has stated on a number of occasions that the UK will not be in a position to implement Prüm by 1 December 2014 [the date on which the full jurisdiction of the Court and the Commission's enforcement powers would take effect]. We are also concerned that Prüm's current technical requirements are out of date and that it would be better to see whether there is a more modern solution that allows better exchange of information, for example producing fewer false positives or requiring less human intervention.”⁴⁰

63. The Government noted also that, at the time, the UK had the largest DNA database in the EU and that this could result in the UK receiving “a disproportionate number of requests from other EU States”. Despite these reservations, the Government confirmed

37 See the Home Secretary's Oral Statement, HC Deb, 9 July 2013, col.180

38 *HC Deb*, 9 July 2013, col.177

39 See [Command Paper 8671](#).

40 See pp.106-7 of Command Paper 8671.

that it had applied for, and obtained, EU funding “to start work on the DNA element of Prüm”.⁴¹

64. The Government’s Explanatory Memorandum on Framework Decision 2009/905/JHA noted that the UK had implemented the measure “through administrative means” and that the quality standards it prescribes were replicated in the UK Forensic Science Regulator’s Codes of Practice and Conduct.⁴² The Government added:

“From a UK perspective, the quality standards delivered by the instrument can be achieved without statutory direction at EU level. The UK benefits from the exchange of science evidence and intelligence and the quality received from other Member States is being driven up.”⁴³

65. The Government acknowledged that “forensic service delivery models and criminal justice systems differ substantially across Member States” and that it was likely that the Framework Decision was being interpreted and implemented differently as some of the key terms were not defined. It considered that, even if the UK were to opt out, the UK’s Forensic Science Regulator would “still push for UK laboratories to work to the standards set out in the instrument”.⁴⁴

66. A debate was held in both Houses shortly after the publication of Command Paper 8671, following which the Government formally notified the EU institutions that the UK would exercise its block opt-out of pre-Lisbon EU police and criminal justice measures.

67. In October and November 2013, the European Scrutiny Committee, Home Affairs Committee and Justice Committee all published Reports on the UK’s block opt-out which were highly critical of the Government’s engagement with Parliament and its handling of a subject which was both complex and politically contentious.⁴⁵

68. The Report produced by the European Scrutiny Committee considered all of the measures subject to the UK’s block opt-out decision. On the two Prüm Decisions, the Committee accepted that the risk that the UK might be brought before the Court of Justice and subjected to financial penalties was “particularly acute”, given the significant delay before the UK would be in a position to implement the measures in full, and that the Government’s “pragmatic” decision not to rejoin the Decisions was justified in the circumstances. The Committee added:

“The Government’s decision not to rejoin the Prüm Decisions with effect from 1 December 2014 does not, however, prevent the Government from doing so at a later stage. We note that significant investment will be required to implement Prüm in full, and that the Government has succeeded in securing EU funding to take forward work on the DNA elements. Although the Government has stated that its acceptance of funding should not be taken as an indication

41 See p.107 of Command Paper 8671.

42 See the [Codes of Practice and Conduct](#) published by the UK’s Forensic Science Regulator.

43 See pp.115-6 of Command Paper 8671.

44 See pp.115-16 of Command Paper 8671.

45 See the Report of the European Scrutiny Committee, The UK’s block opt-out of pre-Lisbon criminal law and policing measures, [Twenty First Report](#) (2013-14), HC 683; the Report of the Home Affairs Committee, Pre-Lisbon Treaty EU police and criminal justice measures: the UK’s opt-in decision, [Ninth Report](#) (2013-14), HC 615; the Report of the Justice Committee, Ministry of Justice measures in the JHA block opt-out, [Eighth Report](#) HC 605; and the [First Joint Report](#) of all three Committees, The Government’s response to the Committees’ Reports on the 2014 block opt-out decision, HC 1177.

that it intends to opt back into Prüm, we think that a clearer statement of its intentions regarding future UK participation in Prüm is warranted.”⁴⁶

69. In its formal Response to the Committee’s Report, the Government observed:

“The EU funded work on the DNA elements of Prüm, and other considerations by the Government, is designed to give the next Government a clear set of options on whether or not it should seek to rejoin Prüm. The work will look at the cost of implementing Prüm as well as the operational benefits that would result from being able to check the DNA and fingerprint databases of other EU countries and whether they would benefit from accessing DNA and fingerprints held in the UK, which will include DNA and fingerprints of foreign nationals. It will also look at whether there is operational benefit to the UK being made aware, virtually instantly, of vehicle registration details of EU registered cars being driven on UK roads. Our work will also consider the civil liberties implications of such data sharing in all three Prüm categories.”⁴⁷

70. With regard to the Framework Decision, the Committee noted:

“Quality assurance in this area is of particular importance in the context of cross-border police investigations in order to ensure that forensic evidence obtained in one Member State and used in court proceedings in another Member State is recognised as being reliable.”⁴⁸

71. The Committee sought the Government’s assurance that UK forensic service laboratories would be in a position to comply with the relevant international standard set out in the Framework Decision (even though they would no longer be under a legal obligation to do so) within the timescales envisaged for DNA profiles (end November 2013) and fingerprint data (end November 2015).

72. In its Response, the Government confirmed that UK forensic laboratories producing DNA profiles have been accredited to the relevant international standards “for many years now and, indeed, cannot load DNA profiles to the DNA database without such accreditation”.⁴⁹

Why is the Government considering rejoining the Prüm measures?

73. The measures subject to the UK’s block opt-out—including the Prüm Decisions and the Framework Decision—ceased to apply to the UK with effect from 1 December 2014.

74. During a general debate on the UK’s block opt-out decision in July 2014, the Home Secretary explained that the UK had “successfully resisted” rejoining Prüm, adding:

“We have neither the time nor the money to implement Prüm by 1 December [2014]. I have said that it will be senseless for us to rejoin it now and risk being infringed. Despite considerable pressure from the Commission and other Member States, that remains the case”.⁵⁰

46 See para 484 of the Committee’s [Twenty First Report](#) (2013–14), HC 683.

47 See the Government’s Response, [Second Special Report](#) (2013–14), HC 978.

48 See para 504 of the Committee’s [Twenty First Report](#) (2013–14), HC 683.

49 See the Government’s Response, [Second Special Report](#) (2013–14), HC 978.

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

75. Nonetheless, the Home Secretary highlighted the importance of solving “the most serious crimes such as rapes and murders” and bringing their perpetrators to justice:

“In some cases, that will mean the police comparing DNA or fingerprint data with those held by other European forces. Thirty per cent of those arrested in London are foreign nationals, so it is clear that that is an operational necessity. Therefore, the comparisons already happen, and must do so if we are to solve cross-border crime. I would be negligent in my duty to protect the British public if I did not consider the issue carefully.”⁵¹

76. She confirmed that, as part of the negotiations authorising the UK to opt back into 35 EU police and criminal justice measures subject to the block opt-out, the Government had agreed to “produce a business and implementation case and run a small-scale pilot with all the necessary safeguards in place”. She continued:

“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 [2015]. However, the decision on whether to rejoin Prüm would be one for Parliament”.⁵²

77. The obligation to review UK participation in Prüm stems from two Council Decisions adopted in November 2014, shortly before the UK’s block opt-out took effect. The first Council Decision, concerning consequential and transitional arrangements, noted that the UK would no longer be participating in the two Prüm Decisions and the Framework Decision (the first time, to our knowledge, that these three measures were treated as a package), but added:

“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 United Kingdom shall, in close consultation with operational partners in the United Kingdom, the Member States, the Commission, Europol and Eurojust, undertake a full business and implementation case in order to assess the merits and practical benefits of the United Kingdom rejoining the Prüm Decisions and the necessary steps for it to do so.”⁵³

78. The Decision specified that the UK should publish the results of the business and implementation case by 30 September 2015 and, if these were positive, decide by 31 December 2015 whether to seek to rejoin the Prüm package. It included a recital noting that “the United Kingdom has indicated that a positive vote in its Parliament is required before such a decision is taken”.

79. The second Council Decision noted that the UK had been granted EU funding up to a maximum of just over €1.5 million to support two strands of work on the exchange of DNA profiles and the evaluation of fingerprint data. It stipulated that the UK would be required to repay Prüm-related EU funding in any of the following circumstances:

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

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

53 See [Council Decision 2014/836/EU](#) determining certain consequential and transitional arrangements concerning 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.

- the Government failed to publish the results of the business and implementation case by 30 September 2015; or
- if the results were positive, the Government failed to reach a decision on UK participation in the Prüm package by 31 December; or
- the Government failed to notify the Council of its decision within four weeks of 31 December 2015.

EU funding would, in any event, have to be repaid if the UK decided not to participate in the Prüm package.⁵⁴

80. Apart from financial consequences, the Council Decisions made clear that UK law enforcement authorities were also precluded from accessing fingerprint data held in the Eurodac database until such time as the UK participated in Prüm. The Eurodac database contains the fingerprints of individuals aged 14 or over who have made an application for asylum in a Member State, as well as third country nationals apprehended in connection with the irregular crossing of a land, sea or air border. The database is intended to support the application of the Dublin rules which establish a single Member State responsible for examining an application for international protection, particularly where multiple claims have been made in different Member States or an application has been submitted in one Member State following irregular entry to the EU through a different Member State. Changes agreed in 2013 (which took effect in July 2015) extend access to the Eurodac database to national law enforcement authorities in order to prevent, detect or investigate terrorist or other serious criminal offences, but only if they have already carried out a search and comparison of the automated fingerprint identifications systems of all other Member States under the Prüm Decisions. As the UK is unable to fulfil this condition, UK law enforcement authorities cannot, for the time being, access Eurodac fingerprint data.

81. In evidence to the European Scrutiny Committee in January 2015, the Home Secretary provided further information on the Prüm pilot project which would inform the Government's business and implementation case:

“One of the key factors in looking at Prüm is that it is within the gift of the Member State concerned to determine what the database is that is going to be accessed by the other Member States. We have agreed to undertake this pilot. That will involve exchanging up to 10,000 unsolved UK crime scene DNA profiles with Member States that are applying Prüm, and sharing that as a result of the business and implementation case. The question that is asked in Prüm is simply, ‘Do you have a match to this’? It does not necessarily involve any more information than that.

“We also agreed that other Member States may provide crime scene profiles to the UK, up to a maximum capacity of 3,000, and those will be searched against an agreed set of profiles containing serious criminals convicted in the United Kingdom. We can currently exchange DNA with other Member States through Interpol. It is very slow, and the volume of exchange tends to be

54 See [Council Decision 2014/837/EU](#) 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.

very limited. There are those who say that Prüm has an advantage in being an agreed procedure that is faster and speedier, and therefore gives easier results. We have been very clear that any consideration of Prüm should be a matter for Parliament, and there will be a business and implementation case that will bring within it the results of the pilot, to show whether there has been any impact—any cases that could have been solved, for example, as a result of that pilot.”⁵⁵

82. In subsequent correspondence with the Committee, Home Office Ministers confirmed that the selection of Member States for the pilot project was intended to have operational value in identifying criminals and in testing how well national DNA databases based on different technical standards could work together. The Member States chosen were:

- the Netherlands, “the technical lead for DNA in the Prüm context because of shared technology and because of existing personal contacts”;
- Spain, “a country with a relatively large DNA database and a country with which the UK has significant population interchange”;
- France, “a country with a relatively large DNA database, significant population interchange and geographical proximity”; and
- Germany, “a country with a relatively large DNA database and significantly different DNA technical standards. Any Prüm solution will have to deal with all EU Member States’ DNA databases, so having experience with one that has different structures will be useful to make sure that Prüm could work with countries with differing as well as similar technical standards”.⁵⁶

83. The Government made clear that it would be for the UK to determine which UK DNA databases could be accessed by other Member States during the pilot, and that the business and implementation case would help to determine what restrictions on access would be appropriate, if the Government were to recommend that the UK should seek to participate fully in the Prüm system.

84. The pilot project included a number of “additional conditions and safeguards”, notably limiting searches against DNA profiles in the UK to those taken by the Metropolitan Police following arrest or conviction, and limiting data sent by the UK for checking against databases in other participating Member States to crime scene profiles relating to serious unsolved crimes which were of a high evidential value and where there was a single DNA source. The Government indicated that there would be close oversight of any investigations which followed from a positive “hit”.

85. The Government confirmed that the UK’s Biometrics Commissioner and Information Commissioner were aware of the pilot and would be informed of any emerging findings. In his Annual Report for 2014, the Biometrics Commissioner (Alastair MacGregor QC) indicated that he was aware of, and would take an active interest in, the terms and conduct of the Prüm pilot project, highlighting two aspects which are at the heart of the debate concerning possible UK participation in Prüm:

⁵⁵ [Evidence session](#) on 12 January 2015.

⁵⁶ Letter of 7 July 2015 from the Immigration Minister (James Brokenshire) to the Chair of the European Scrutiny Committee, reproduced in the Appendix to this Report.

“It has been suggested that considerable policing benefits could flow from UK membership of the Prüm system, particularly in circumstances where—as I have repeatedly been reminded—approximately 25–30% of individuals arrested by the Metropolitan Police Service are foreign nationals. Equally, however, it has been suggested that issues arise as regards that system, particularly in the context of possible adventitious matches.”⁵⁷

⁵⁷ See p.95 of the [2014 Annual Report](#).

Section Three

86. In this Section, we summarise the main findings of the Government’s Business and Implementation Case and the recommendation made in Command Paper 9149 to participate in Prüm.

The Government’s Business and Implementation Case

87. The Business and Implementation Case sets the decision on UK participation in Prüm in the context of an expanding European Union in which ease of communication and movement across borders provides opportunities for cross-border criminality. It notes that Foreign National Offenders account for around 15% of all arrests in the United Kingdom, although there is significant variation across police forces (only 2% for the Durham Constabulary compared with 30% for the Metropolitan Police Service). Drawing on force arrest data provided by the ACRO Criminal Records Office for 2013–14, the Government estimates that around 50% of Foreign National Offenders are EU nationals.

88. The Business and Implementation Case briefly describes the existing legislative framework governing DNA and fingerprint searches for law enforcement purposes across all jurisdictions within the UK. At an international level, exchanges of DNA, fingerprint and vehicle registration data are carried out manually through the National Crime Agency’s UK International Crime Bureau (UKICB) and are based on established Interpol procedures which “are often seen as cumbersome and untimely”.⁵⁸

89. In the following paragraphs, we summarise the key points presented for each of the Options considered in the Business and Implementation Case:

- Option One—Do nothing, maintain the status quo.
- Option Two—Fully implement Prüm.
- Option Three—Seek alternatives to Prüm.

Option One—Do nothing, maintain the status quo

90. The first option assumes that law enforcement cooperation with EU Member States (and other international partners) on the sharing of DNA profiles, fingerprints and vehicle registration data would continue on the basis of existing Interpol channels.⁵⁹

91. The Business and Implementation Case describes the data available for exchange and the procedural steps that have to be followed. In the case of DNA and fingerprint data, they include a risk assessment by the National Crime Agency to ensure that it is safe to share the information. The risk assessment takes place after the relevant UK DNA and fingerprint databases have been searched.

92. Whilst police forces across the UK have direct access to vehicle data held by the Driver and Vehicle Licensing Agency (DVLA) on UK registered vehicles, they are unable to obtain instant access to similar information on foreign registered vehicles. This can

⁵⁸ See p.14 of Cm 9149.

⁵⁹ Interpol processes governing the exchange of DNA and fingerprints are depicted in Annex F to the Government’s Business and Implementation Case.

delay investigations concerning foreign nationals using the UK road network to further their crimes. The impact is most noticeable at the land border between Northern Ireland and the Republic of Ireland—the Police Service of Northern Ireland has no routine access to Irish vehicle registration data.

93. A recent Directive on the cross-border enforcement of road traffic offences requires Member States to provide reciprocal automated access to certain vehicle registration data for the purpose of investigating a number of road safety-related traffic offences, such as speeding or drink driving.⁶⁰ Even so, automated searches based on the Prüm Decisions are broader in scope, encompassing “the prevention and investigation of criminal offences”, “other offences coming with the jurisdiction of the courts of the public prosecution service in the searching Member State”, and public security.

94. Information collated by the UK’s Biometrics Commissioner for his 2014 Annual Report demonstrates that the volume of international transactions involving DNA profiles and fingerprints (both incoming and outgoing) is low. A number of case studies included in the Business and Implementation Case suggest that the processes involved can also be protracted.⁶¹ Requests for searches of vehicle registration data are also reported to be low.

Benefits

95. The main stated benefits of the first option are:

- No additional implementation costs.
- No jurisdiction to be ceded to the Court of Justice.
- Low risk of incriminating an innocent person as a result of a DNA and/or fingerprint match.

Risks

96. The main stated risks are:

- Poorly defined and cumbersome international exchange channels and processes via Interpol, resulting in low levels of international transactions.
- Absence of time limits for requests channelled through Interpol which can cause significant delay and hamper investigations.
- Lack of an effective international mechanism for the routine bulk exchange of information on volume crime, resulting in missed opportunities to identify crime trends and patterns.⁶²

60 See [Directive 2015/413/EU](#). The full list of offences covered by the Directive is speeding, failure to use a seat belt, failure to stop at a red light, drink driving, driving while under the influence of drugs, failure to wear a safety helmet, the use of a forbidden lane, and the illegal use of a mobile phone or other communication device. The Directive has to be implemented by May 2017 (in Ireland, Denmark and the UK), and elsewhere in the EU by May 2015.

61 See p.23 of Cm 9149.

62 The Association of Chief Police Officers (ACPO) defines volume crime as “any crime which, through its sheer volume, has a significant impact on the community and the ability of the local police to tackle it. Volume crime often includes priority crimes such as street robbery, burglary and vehicle-related criminality, but can also apply to criminal damage or assaults”.

Option Two—Fully implement Prüm

Wider law enforcement cooperation

97. The Business and Implementation Case focusses primarily on the provisions of Prüm concerning the exchange of DNA, fingerprint and vehicle registration data, and the technical infrastructure that would be needed to implement them, as these are expected to present the most significant challenges. The UK would also have to implement the remaining information exchange provisions concerning the prevention of terrorism, the prevention of crime and the maintenance of public order and security in relation to major events with a cross-border dimension, and other forms of law enforcement cooperation.

98. The Government considers that current mechanisms and practice in the UK for sharing information comply with Prüm. As regards other forms of law enforcement cooperation, the Government explains that Prüm facilitates, but does not require, joint patrols and other operations, adding that the UK would “never use Prüm to permit foreign officers to carry firearms in the UK”, but that the provisions may be of value in allowing UK officers deployed in another Member State (for example, in connection with a football match) to wear protective equipment.⁶³

DNA, fingerprint and vehicle registration data

99. Option two of the Business and Implementation Case sets out in some detail the practical operation of Prüm systems for DNA, fingerprint and vehicle registration data exchanges. It highlights, in particular, the speed of the initial response—10 seconds for vehicles, 15 minutes for DNA profiles, and 24 hours for fingerprints—and the transformation of existing manual processes for handling inbound requests for DNA and fingerprint information through the introduction of automated searching.⁶⁴ Manual processes would continue to apply to the latter stages of the process, following a hit or match, to ensure that proper safeguards are applied before personal (demographic) data are released.

100. The Government suggests that a number of barriers impeding UK participation in Prüm have been overcome following changes to the UK’s DNA and fingerprint database infrastructure. In particular, the size of the UK’s DNA database (“NDNAD”) and fingerprint database (“IDENT1”) has been substantially reduced, following implementation of the Protection of Freedoms Act 2012, Northern Ireland is now linked to both databases, and Northern Ireland vehicle records are now fully integrated with DVLA.

101. The Business and Implementation Case provides details of the Prüm pilot carried out between March and August this year. The pilot only covered the exchange of DNA data. According to the Government:

“The main objective was to test, within a tightly controlled environment, how Prüm style bulk exchanges of data would work in practice, providing valuable insights into both the technical and operational requirements of such

63 See p.28 of Cm 9149.

64 See p.32 of Cm 9149.

exchanges as well as the number of hits that could potentially be generated by Prüm in the field of DNA.”⁶⁵

102. The safeguards put in place for the pilot included:

- Full compliance with the Prüm data protection requirements.
- Limiting the size of the available UK data-set—around 2,500 unsolved UK DNA crime scene profiles selected for their high probative value were exchanged with each of the other participating Member States (France, Germany, the Netherlands and Spain)⁶⁶ and 750 crime stain profiles from each of these countries were searched against an agreed set of anonymised profiles of criminals convicted in the UK of serious crimes.⁶⁷
- Only exchanging DNA profiles with a high evidential value—for example, blood, semen or saliva originating from a single DNA source.
- Requiring all profiles exchanged to exceed the minimum standards permitted under Prüm—10 loci rather than six—and providing for independent scientific verification of each hit in order to confirm or eliminate a match before exchanging personal (demographic) data.

103. In separate correspondence with the European Scrutiny Committee, the Government made clear that the initial hit or match does not contain any personal data and that any data sent through Prüm is searched a single time and then deleted:

“Prüm is not a way of allowing Member States to increase the size of their national DNA database, it is instead a way of ensuring that the profiles can be searched against not just domestic profiles but also those held by other EU countries.”⁶⁸

104. The updated version of the Business and Implementation Case reproduced in Command Paper 9149 includes a tabular analysis of the results of the Prüm pilot, setting out the hits obtained and operational action taken following verification of their quality and accuracy.⁶⁹ The checking of UK crime stain profiles against the databases of the four participating Member States yielded 71 scene-to-person matches (2.8% of the sample) and 47 scene-to-scene matches (1.9% of the sample). In correspondence with the European Scrutiny Committee, the Immigration Minister (James Brokenshire) explained:

“Further scientific verification by the Metropolitan Police, including checking the electropherograms from the UK profile and the profile hit against, has concentrated on the Quality 1 crime scene to person hits. Of the 26 verified Quality 1 hits, 25 have had 10 loci or more matching.

65 See p.33 of Cm 9149.

66 These four countries account for 79% of the approximately 5 million total person profiles potentially available through the Prüm database, and 73% of the approximately 0.7 million total crime scene stains — see p.46 of Cm 9149.

67 See p.34 of Cm 9149.

68 Letter of 7 July 2015 from the immigration Minister (James Brokenshire) to the Chair of the European Scrutiny Committee, reproduced in the Appendix to this Report.

69 See pp.37-45 of Cm 9149.

“This has produced verified hits relating to a wide range of crimes including rape, arson and burglary. So far no Britons have been the subject of a hit; hits are instead to people who are from other EU countries or from outside the EU [...]”

“The pilot has produced some interesting results. For example, a Prüm pilot hit has allowed the police to identify a Romanian national who is suspected of attempted rape on a 28-year old woman. The suspect was arrested in London on 10 November 2015. There are two further Metropolitan Police rape cases being taken forward, and one from the West Mercia Police.”⁷⁰

105. The Business and Implementation Case acknowledges that the Prüm DNA exchange pilot “only yielded a relatively small number of hits” but suggests that full UK participation in Prüm (encompassing all Member States) “could generate new evidence to support [the] conclusion of some serious crimes, both from scene-to-person and scene-to-scene DNA matches” and “offers an opportunity to build knowledge about cross-border criminal activity”.⁷¹

Benefits

106. The Business and Implementation Case states:

“At its core, Prüm potentially provides the strategic platform that could assist the UK authorities in separating out and identifying criminals from law-abiding migrants and travellers. It could help greatly with suspect identification/elimination and investigation.”⁷²

107. The main stated benefits of the second option are:

- Simplified processes to request information and/or data, ensuring that greater sharing of information becomes a routine activity.
- Efficiency gains in international searching, as Prüm allows more enquiries to be processed and simultaneous searching against other Member States’ databases.
- An increased capability to resolve unsolved crimes.
- Better response times to requests for information which could lead to the more rapid identification of potential offenders.
- More effective and efficient use of current UK data system exchange processes and technology, yielding a stronger return on UK investment.
- Capability to detect volume crime as well as serious crime.
- Enhanced crime and terrorism intelligence picture—Prüm offers the potential to search a dataset of more than 26 million fingerprints.

70 See letter of 18 November 2015 from the Immigration Minister (James Brokenshire) to the Chair of the European Scrutiny Committee, reproduced in the Appendix to this Report.

71 See p.47 of Cm 9149.

72 See p.33 of Cm 9149.

- Access to the Eurodac fingerprint database (see para 80)—this would be limited to cases in which a comparison of fingerprint data responds to “an overriding public security concern” and is necessary in a specific case to prevent, detect or investigate a terrorist or other serious criminal offence.⁷³

Risks

108. The Business and Implementation Case recognises the need to balance the public interest in the prevention and detection of crime and the individual’s right to privacy. The following risks are identified:

- Adventitious matches or ‘false positives’ which lead to innocent individuals being identified as crime suspects.
- Automated release of vehicle registration data, including personal information, without further verification.
- Conferral of jurisdiction on the Court of Justice.
- High volume of requests and follow-up work, as the UK’s criminal fingerprint and DNA databases are significantly larger than those of other Member States.
- Cost, both in establishing, and maintaining and running, the necessary infrastructure.⁷⁴

109. The Business and Implementation Case addresses each of these risks. Turning first to the risk of false positives, it draws on a study commissioned by the Government to examine the anticipated match rate (estimated scale of ‘hits’) that would result from the exchange of DNA profiles if the UK were to participate in Prüm, and the likely scale of “adventitious matches”—these are DNA profiles from two individuals (who are not identical twins) that match by chance.⁷⁵ The study notes that adventitious matches are most likely to occur during the initial bulk exchange of DNA crime scene and person profiles, as this is the stage at which the largest number of comparisons will be performed. It makes a number of recommendations on the composition of DNA profiles that should be exchanged between the UK and other Member States to reduce the risk of adventitious matches and increase the probability of achieving true matches. In the case of crime scene profiles, the study recommends exchanging those that have 8 or more complete loci—whilst the level of adventitious matches with 8 or 9 loci is very low, the study suggests that upgrading matches to at least 10 loci would represent “good practice”. As for person profiles, the study recommends sharing all of the UK’s profiles, but only routinely releasing personal (demographic) information to another Member State if there are at least 10 matching loci. In exceptional cases, where a very serious crime is involved, consideration could be given to sharing demographic information where there are at least 8 matching loci.

110. The Business and Implementation Case says that the Government will:

⁷³ See pp.47-9 of Cm 9149 (and pp.67-8 on Eurodac access).

⁷⁴ See pp.49-53 of Cm 9149.

⁷⁵ The Statistical Study is attached to the Business and Implementation Case as Annex H. Appendix 1 of the Study helpfully sets out the number of DNA crime scene and suspect profiles held in the Prüm comparison databases of 14 Member States and the composition of the profiles (by reference to the number of loci). The German database holds the largest number of crime scene profiles (245,408), the UK database the largest number of suspect profiles (over 5.5 million). For comparison, France has just over 2.5 million suspect profiles.

- Only allow Member States to search the DNA profiles or fingerprints of individuals who have been convicted in the UK.
- Only share crime scene profiles with other Member States which have more than 8 loci, to ensure that the level of adventitious hits is kept within “acceptable and manageable levels”.
- Only routinely share personal (demographic) data with other Member States relating to person profiles held in the UK’s DNA database if 10 or more loci match—this would not preclude further work on hits with fewer than 10 matching loci to try to improve the number of matching loci, particularly in relation to serious crimes.

111. The Business and Implementation Case notes that there is increasing convergence in DNA testing systems and the standards used by Member States which further reduces the risk of adventitious matches.⁷⁶

112. As regards the release of personal data following an automated search of vehicle registration databases, the Government considers that the “strict data protection rules” governing Prüm exchanges adequately protect individuals. It also notes the similarity with the data which will become available once the UK has implemented the Cross-Border Enforcement Directive (see para 93).

113. The Business and Implementation Case acknowledges that accepting the jurisdiction of the Court of Justice (CJEU) is “not risk free”, but suggests that the risks are greater in matters of substantive criminal law, adding:

“Where a measure deals with cooperation with other Member States the Government will balance the risk of CJEU jurisdiction against the potential benefits the new measure can bring.”⁷⁷

114. Similarly, the Business and Implementation Case recognises that the size of the UK’s criminal fingerprint and DNA databases increases the risk of a high volume of follow-up work by UK law enforcement authorities once a hit has been made. The Government considers that the workload can be managed by staging the UK’s connection to other Member States’ fingerprint and DNA databases, phasing the bulk exchange of DNA profiles, and using quotas to limit the volume of fingerprint search requests. Whilst the number of inbound requests to the UK is likely to exceed those currently routed through Interpol, the initial stages of the Prüm process will be automated and follow-up requests will be more targeted.⁷⁸ The Government notes, moreover, that “21 Member States currently operate Prüm, yet none show any evidence of Prüm overburdening their police or court systems”.⁷⁹

115. Finally, in relation to risks, the Business and Implementation Case notes that the costs of implementing Prüm—estimated at around £13.5 million—are significantly lower than the original estimate of £31 million made in 2007 (shortly before the Prüm Decisions were adopted).

76 See p.50 of Cm 9149.

77 See p.52 of Cm 9149.

78 See p.52 of Cm 9149.

79 See p.78 of Cm 9149.

Evaluation of Prüm

116. The Business and Implementation Case reports the findings of the Government’s evaluation of the “potential impact, benefits, risks, costs and solutions for the UK” if it were to participate in Prüm, based on the operational experience of Member States already implementing Prüm (described as “universally positive”). It highlights “the crime solving potential of Prüm as an additional investigative tool for operational police officers” and makes a number of recommendations to ensure that Prüm is used appropriately, effectively and safely. In the case of vehicle-related crime, the Government considers that it would help “level the playing field for national and foreign registered vehicles”.⁸⁰

Inclusion of a proportionality safeguard

117. Under Prüm, the automated searching and comparison of DNA profiles and fingerprints is available for the investigation of any criminal offence, no matter how minor. Although there are no technical means to prevent a request being made, the Government notes that a Member State may choose not to send personal (demographic) information following a hit if the crime abroad is not sufficiently serious. The Government proposes to include an additional proportionality safeguard in cases involving follow-up requests for personal information after a verified hit relating to a minor. In such cases, the Government would require a formal Letter of Request sent through mutual legal assistance channels.⁸¹

Timeline for implementing Prüm and governance arrangements

118. The Business and Implementation sets out a projected timeline for implementing Prüm if Parliament were to endorse the Government’s recommendation to participate. It suggests that the earliest connection date would be 2017, with implementation of vehicle registration data, DNA and fingerprint exchanges phased in over three years. Implementation and governance of Prüm would be entrusted to a Prüm Oversight Group comprising, at a minimum, the National Crime Agency, the National Police Chiefs’ Council, Police Scotland, the Police Service of Northern Ireland, the Home Office, the Department for Transport, the Scottish Government, the Northern Ireland Department of Justice and the National DNA Database Delivery Unit.

119. The UK Information Commissioner and Biometrics Commissioner would be responsible for auditing the UK’s compliance with Prüm requirements, with oversight of international DNA exchanges remaining with the National DNA Strategy Board.⁸²

Domestic implementing legislation

120. The Prüm Decisions require Member States to “take the necessary measures to comply” with them but do not state, in terms, that they have to be transposed (given effect to) in domestic law. The Government nevertheless considers that it would be desirable to set out in legislation the following safeguards:

- Member States will only be able to search against DNA profiles and fingerprint data of individuals convicted in the UK.

⁸⁰ See pp.53-63 of Cm 9149.

⁸¹ See p.65 of Cm 9149.

⁸² See p.69 of Cm 9149.

- Personal (demographic) data will only be shared following a hit on the UK’s DNA database if there are at least 10 matching loci or, in the case of person-to-person matches (intended to confirm identity), once the UK has also obtained fingerprint data confirming the match.
- For cases involving minors, personal (demographic) data will only be shared following a hit on the UK’s DNA and fingerprint databases once the UK has received a formal Letter of Request.

121. The draft legislation proposed by the Government would also give effect in domestic law to the related Framework Decision on the accreditation of forensic service providers.⁸³

Option Three—Alternatives to Prüm

122. Option three considers two possibilities for achieving Prüm-style arrangements with other Member States without opting into Prüm.

123. The first envisages the conclusion of an agreement with the EU allowing the UK to participate in Prüm without accepting judicial oversight by the Court of Justice. The Government concludes that such an arrangement “would not, in practice, be possible” for three reasons:

- Denmark is the only Member State to have concluded agreements with the EU in the justice and home affairs field, but the UK is not in a comparable position—the UK has the option of participating in EU justice and home affairs measures whereas Denmark is no longer able to do so under the Lisbon Treaty.⁸⁴
- Even if the UK were able to conclude such an agreement, the precedents indicate that the EU would insist on the UK accepting the jurisdiction of the Court of Justice.
- The terms of the UK’s 2014 block opt-out require the UK to decide by the end of 2015 whether to re-join the Prüm package—if the UK were to seek, instead, to negotiate an international agreement, it would be dependent on the Commission proposing a negotiating mandate, a qualified majority of Member States agreeing to conclude an agreement with the UK, and the European Parliament giving its consent. The Government considers this to be “improbable”.

124. The second possibility considered is the conclusion of a succession of bilateral agreements establishing Prüm-style arrangements with certain other Member States. The Government questions whether it would be legally or politically possible for other Member States to enter into such agreements with the UK outside the framework established by Prüm. It considers that the agreements would, in any event, be subject to the jurisdiction of the Court of Justice.

⁸³ The relevant draft legislation is set out in Annex J to the Business and Implementation Case.

⁸⁴ Protocol 22 on the Position of Denmark annexed to the EU Treaties provides that Denmark shall not take part in any EU justice and home affairs (JHA) measures agreed after the Lisbon Treaty took effect on 1 December 2009. Previously, Denmark only had an opt-out of EU measures in the field of asylum, immigration and civil judicial cooperation. Denmark remains bound by pre-Lisbon EU police and criminal justice measures, including the Prüm Decisions.

125. Even if it were possible to pursue either of these options—a single bilateral agreement with the EU or a series of bilateral agreements with individual Member States—the UK would have to repay funding already received from the EU (around €1.5 million) to support implementation of Prüm in the UK.

The Command Paper

126. In the Executive Summary of the Command Paper, the Government concludes that there would be “undoubted operational and public protection benefits” if the UK were to participate in Prüm and that the legislative framework it has proposed “would allow Prüm to operate in a way that respects fully the civil liberties of British citizens”. The Government highlights the following benefits:

- A far higher volume of exchanges of DNA profiles and fingerprints than is possible under existing Interpol processes.
- Much faster and more predictable response times.
- The incorporation of exchanges of DNA profiles and fingerprints within standard police operating procedures.
- Improved intelligence on organised patterns of offending which makes it easier to plan a coordinated response.

127. The Government considers that there are no viable alternatives to Prüm. It describes existing Interpol processes as “cumbersome, labour-intensive and slow”, with “no likelihood” of being able to improve them, and suggests that it would not be possible, in practice, to negotiate a separate bilateral agreement with the EU. The Government therefore recommends that “it would be in the national interest for the UK to seek to rejoin Prüm”.⁸⁵

85 See p.7 of Cm 9149.

Appendix—Correspondence between Home Office Ministers and the European Scrutiny Committee

Letter from the Minister for Modern Slavery and Organised Crime (Karen Bradley) dated 12 February 2015

When she appeared before your committee on 12 January, the Home Secretary was clear that the Prüm Business and Implementation Case would be presented to Parliament once completed—before the end of September—and Parliament would vote on whether or not the UK should rejoin Prüm—before the end of December. The Home Secretary also provided information on the Pilot Prüm style DNA exchange being undertaken to inform the Business and Implementation Case.

We have approached The Netherlands, Spain, France and Germany with a view to their taking part in the pilot. We have drafted a Memorandum of Understanding (MoU) governing the pilot exchange process which will be agreed with each participating country prior to any exchange taking place. These will be signed by a Government Minister on behalf of the UK. Scottish and Northern Irish colleagues have been fully involved.

Our intention is to carry out the bulk of the pilot exchange with these countries between March and June, but the precise timelines will depend on agreement of each MoU. The initial hit/no hit response from these exchanges will be returned to the UK within hours, thus most of the time for the pilot process will be taken up in the evaluation of the hits (checking that the hit is a valid hit scientifically), then undertaking the second stage (follow up) procedures which involve asking the other Member State for demographic information on any subject profile which matched one of our crime scene profiles, or assessing whether to supply any demographic information for a UK held subject profile which matched another member state's crime scene profile. We will, of course, be ensuring extremely close oversight of the investigation following a hit.

The data which the UK will send for searching against the databases of our pilot partners is crime scene profiles from serious unsolved crimes. These are being thoroughly risk assessed to ensure that they are of a high evidential value (for example blood, semen or saliva from a female victim's breast), and are from a single source of DNA, as opposed to being from a crime scene profile containing DNA from more than one person. The crime scene profiles we receive from other Member States to search against our data will be searched against an agreed set of profiles containing serious criminals convicted in the United Kingdom. It will not be searched against the full National DNA Database, but a smaller subset. We will also be extremely careful before we share demographic data on any hits we obtain as a result of this pilot exchange, making sure they satisfy all our predetermined conditions. I am satisfied that the processes and safeguards we have in place for the pilot are robust.

We have been in regular contact with the Biometric Commissioner concerning the pilot, and have also informed the Information Commissioner. We intend to keep them fully informed of the pilot and any emerging findings. All relevant documentation will be

contained within the final report but we are happy to share information with you as it emerges from the pilot process if that would be desirable. Equally, I would be very happy to receive any views from the Committee or any individual members of the Committee as to their views on either the pilot, or Prüm more generally.

Reply from the Chair of the European Scrutiny Committee to the Minister of Modern Slavery and Organised Crime (Karen Bradley) dated 25 February 2015

IMPLEMENTATION OF THE PRÜM PILOT PROJECT

Thank you for your letter of 12 February providing further details on the Prüm implementation pilot project. We welcome your offer to share with us any emerging findings from the pilot before the final evaluation report is published in September and look forward to receiving further updates once the exchange of data begins in the coming weeks.

Meanwhile, we would be grateful if you could confirm the Member States with which the UK eventually concludes Memoranda of Understanding, the basis on which they were selected, and the period during which the exchange of data will take place.

The pilot project will provide the evidence for an evaluation of the costs and benefits to the UK of full participation in the Prüm system. For that reason, we assume that the pilot will replicate as closely as possible the conditions governing the exchange of certain categories of data under the existing Prüm Decisions. Your letter explains that the pilot will be based on robust processes and safeguards. Can you assure us that similarly robust processes and safeguards would apply under the normal mechanisms for data exchange contained in the Prüm Decisions?

When we discussed the business and implementation case for Prüm with the Home Secretary at her evidence session on 12 January, she indicated that “it is within the gift of the Member State concerned to determine what the database is that is going to be accessed by the other Member States”. Can you confirm that this would remain the case if the UK were to participate fully in the Prüm Decisions, and that the UK would, for example, be able to continue to limit access by other Member States to a smaller subset of its national DNA database?

Your letter largely addresses the exchange of DNA data during the pilot project. Can you please confirm whether the exchange of information on fingerprint and vehicle registration data will also be included in the pilot, whether there will be any restriction on the number of such data exchanges, and which UK databases will be used?

The Council Decision on consequential and transitional arrangements adopted on 27 November 2014 stipulates that the Prüm package encompasses not only the so-called “Prüm Decisions” (2008/615/JHA and 2008/616/JHA) but also a Council Framework Decision (2009/905/JHA) concerning the accreditation of forensic service laboratories. We ask you to explain what impact, if any, the pilot will have on forensic service providers in the UK.

Finally, we would welcome some indication of the cost likely to be incurred by the UK in running the pilot.

Letter from the Immigration Minister (James Brokenshire) dated 7 July 2015

As Karen Bradley's letter of 26 March was not considered by the European Scrutiny Committee before Parliament rose I am writing to repeat the points made her letter as well as to provide a further update on the Prüm Business and Implementation case

The four Member States chosen for the Prüm style pilot are:

- The Netherlands, chosen as the technical lead for DNA in the Prüm context, because of shared technology and because of existing personal contacts;
- Spain, chosen as a country with a relatively large DNA database and as a country with which the UK has significant population interchange;
- France, chosen as a country with a relatively large DNA database, significant population interchange and geographical proximity; and,
- Germany, chosen as a country with a relatively large DNA database and significantly different DNA technical standards. Any Prüm solution will have to deal with all EU Member States' DNA databases, so having experience with one that has different structures will be useful to make sure that Prüm could work with countries with differing as well as similar technical standards.

The Prüm style pilot is intended to be both of operational value (i.e. to identify individuals involved in crime by checking DNA profiles held in other countries) and to ensure we are fully aware of the legal and technical issues relating to any exchange. The exchanges are underway; there have been a number of hits which are being followed up.

Sir William Cash's letter of 25 February 2015 asked about safeguards in place for the pilot exchange and Prüm. Prüm contains some significant safeguards, most notably that the initial hit does not contain any personal data and the requirement that any data sent through Prüm should be searched a single time and then deleted. Prüm is not a way of allowing Member States to increase the size of their national DNA database, it is instead a way of ensuring that the profiles can be searched against not just domestic profiles but also those held by other EU countries.

We have added some additional conditions and safeguards specifically for the pilot. First, we have only sent abroad a limited number of crime scene profiles recovered in cases where we believe identifying the person who has left the profile will be of significant evidential value to an investigation. Secondly, for requests to the UK, the subset of profiles searched against are either from Metropolitan Police convictions or Metropolitan Police arrests of individuals who have convictions elsewhere in the UK.

I can also confirm that it would remain "in the gift of the Member State to determine what the database is that is going to be accessed by other Member States." The relevant section of Council Decision 2008/615/JHA is Article 2(3), which reads:

Each Member State shall inform the General Secretariat of the Council of the nationals DNA analysis files to which Articles 2 to 6 apply and the conditions for automated searching as referred to in Article 3(1) in accordance with Article 6.

The Business and Implementation Case will consider the extent to which we should restrict access in a final Prüm solution, should Parliament vote for us to seek to rejoin Prüm. However, without wishing to pre-judge the outcome of that Business and Implementation Case I would not expect to seek to limit the reference profiles searched against to profiles taken by one police force.

You also ask about the impact on Forensic Service Providers. The pilot will not have any impact on Forensic Service Providers as the data being exchanged are crime scene profiles. No DNA samples will be exchanged. It is already the case that all of the laboratories doing DNA work, including Private Forensic Providers, meet the requirements set out in Council Framework Decision 2009/905/JHA.

Fingerprint and Vehicle Registration Data are not covered by the Prüm style pilot. The Home Office and the Metropolitan Police have incurred minimal additional costs in running the pilot. These have been absorbed within business as usual expenses.

Reply from the Chair of the European Scrutiny Committee to the Immigration Minister (James Brokenshire) dated 21 July 2015

IMPLEMENTATION OF THE PRÜM PILOT PROJECT

Thank you for your letter of 7 July. We note that pilot projects for the exchange of DNA data are currently underway with the Netherlands, Spain, France and Germany. In earlier correspondence with our predecessor Committee, the Government indicated that it would be happy to share with us information as it emerges from the pilot process, in advance of the publication of the final report setting out the results of the business and implementation case in September. In this spirit, your letter indicates that there have been a number of “hits” which you are following up. We would welcome further information, at the earliest opportunity, on the number, quality and accuracy of the hits so far achieved, and the contribution they have made to the investigation and prosecution of serious cross-border criminality.

The deadline for publication of the final report on Prüm—which we understand will take the form of a Command Paper—is 30 September 2015. As this will be during the conference recess, we seek an assurance that the Command Paper will be made available well before that recess, so that there is sufficient opportunity for Parliament to consider it before an eventual vote on UK participation. We also ask you to provide us with a summary of the main findings.

Letter from the Immigration Minister (James Brokenshire) dated 14 October 2015

IMPLEMENTATION OF THE PRÜM PILOT PROJECT

I am very sorry for the unacceptable delay in replying to your letter of 21 July, but due to an administrative error the letter was only recently received in my Private Office. I have asked for steps to be taken to ensure that this does not happen again. I would like to assure you that correspondence from the Committee is taken very seriously and that I will make every effort to provide you with timely responses in future.

In order to meet our obligations under Council Decision 2014/836/EU the Government was required to publish the Prüm Business and Implementation Case (BIC) by the end of September. This was done at <https://www.gov.uk/government/publications/prum-business-and-implementation-case>.

The BIC is a factual document. It does not make recommendations as to whether the Government should seek to rejoin Prüm. It instead sets out the benefits and risks that joining Prüm would bring to the UK, how the UK might implement Prüm, should Parliament vote in favour of rejoining, and the cost of doing so. It also provides detail on the results of the Prüm style pilot in which we and the Netherlands, Spain, France and Germany exchanged DNA profiles.

It remains our intention to publish the BIC by way of a Command Paper, and this will also set out a summary of the Government's position on whether or not we should seek to rejoin the Prüm Decisions. I would also like to reassure you that the decision on whether or not to rejoin remains one for Parliament as a whole.

Reply from the Chair of the European Scrutiny Committee to the Immigration Minister (James Brokenshire) dated 21 October 2015

IMPLEMENTATION OF THE PRÜM PILOT PROJECT

Thank you for your letter of 14 October.

You will recall when we wrote to you on 21 July that we sought an assurance that the Command Paper setting out the Government's position on UK participation in Prüm would be made available well before the party conference recess, so that there would be sufficient opportunity for Parliament to consider it before an eventual vote. Your letter gives no indication of when you intend to publish the Command Paper. We ask you to do so as a matter of urgency.

We wish to make our position clear. We expect there to be sufficient time between publication of the Command Paper and the date on which a vote in Parliament is scheduled to enable us to scrutinise its contents, as well as the Government's recommendation on UK participation in Prüm, and to consider, approve and publish a Report. This would mean a minimum of three weeks. We seek your immediate assurance that this will be the case and that the Government will not thwart proper Parliamentary scrutiny of its recommendation.

As our earlier letter also made clear, we expect the Government to provide information on the number, quality and accuracy of the “hits” so far achieved, and the contribution they have made to the investigation and prosecution of serious cross-border criminality. We reiterate our request for a summary of the main findings of the business and implementation case.

Letter from the Immigration Minister (James Brokenshire) dated 18 November 2015

IMPLEMENTATION OF THE PRÜM PILOT PROJECT

Thank you for your letter of 21 October.

The Prüm Business and Implementation Case (BIC) has been online since 30 September. The link has been provided to your Committee. As my letter of 14 October made clear, the Command Paper itself will comprise the already published BIC and an executive summary setting out the Government’s intention concerning whether or not to seek to rejoin Prüm. I am afraid that at this time I do not have a specific date for publication of the Command Paper, or for the vote. Nonetheless I would invite you to begin consideration of the matter at this stage as there will be no new material information, other than the Government’s position, available upon publication of the Command Paper. I know Parliament would very much welcome the possibility to consider such a report ahead of the vote.

You asked for an overview of the BIC’s main findings. In summary, the BIC sets out the benefits that Prüm would bring to UK law enforcement and how the UK would seek to implement Prüm technically should Parliament vote to rejoin, including the safeguards that we would put in place. It examines the extent of exchange at the moment and looks at whether and how this might be increased under Prüm. It also looks at the cost of implementing Prüm and what alternatives exist.

The BIC sets out the safeguards that the UK would implement should Parliament vote to rejoin Prüm. Firstly, the DNA profiles and fingerprints against which foreign profiles and fingerprints will be checked would be those held only on individuals who have been convicted of an offence. Profiles would not be searched against those who have not been convicted of a crime. Secondly, the UK would only provide demographic details if a Prüm hit is of a standard equivalent to that in the United Kingdom. This is designed to tackle the problem of the so-called ‘false positive’ matches. Thirdly, noting the particular sensitivities around DNA profiles taken when a person was a minor the Government will only provide demographic detail if the profile was taken from a minor if a formal mutual legal assistance request has been made. Fourthly, the UK would not provide demographic data if there was a person-person DNA hit, but would instead, as is the case in the UK, require fingerprint matches before we can confirm identity. Finally, an Oversight Board would be established to ensure that Prüm operated in a proportionate and just way.

The BIC finds that the existing Interpol processes for the exchange of DNA profiles and fingerprints are cumbersome, labour intensive and slow. For example the UK sent 69 DNA profiles abroad in 2014-15 using Interpol; we sent 9,931 profiles in less than six months using the Prüm style pilot. It states that the UK would have the ability to send far more fingerprints abroad than we currently do and that UK police officers would have the

ability to check the Vehicle Registration Data of foreign registered vehicles in 10 seconds rather than taking much longer through Interpol.

The BIC sets out that policing and law enforcement would be likely to benefit significantly from then UK participating in Prüm. The police would gain investigatory leads from matching DNA crime scene profiles and fingerprints latents to known individuals held on databases abroad. The police would receive investigatory benefit from being able to confirm, in quick time by comparing tenprints, that a person arrested in the UK is known to the police in another EU country. The latter would help the police to obtain the previous convictions of the individual, because they would know the individual's identity in the convicting country.

The BIC contains statistical analysis of the likely number of true hits should the UK connect with all Prüm countries. This analysis also looks at the likelihood of adventitious matches should the UK connect to a number of other countries and suggests that it would be sensible if the UK sent crime scene profiles containing eight or more loci for checking abroad to guard against receiving false positive' matches.

The BIC estimates the cost for implementing Prüm at £13m.

You also asked about the Prüm style pilot exchange of DNA profiles. Matching the 2,513⁸⁶ UK pilot crime scene profiles against the databases of the four member states above yielded 71 scene-to-person matches (2.8% of the 2,513 sample) and 47 scene-to-scene⁸⁷ matches (1.9% of the 2,513 sample).

As far as the quality and accuracy of the hits are concerned the attached table shows the quality 1 hits and the quality 4 hits. Further scientific verification by the Metropolitan Police, including checking the eletropherograms from the UK profile and the profile hit against, has concentrated on the Quality 1 crime scene to person hits. Of the 26 verified Quality 1 hits, 25 have had 10 loci or more matching.

This has produced verified hits relating to a wide range of crimes including rape, arson and burglary. So far no Britons have been the subject of a hit; hits are instead to people who are from other EU countries or from outside the EU. Pages 29–36 of the published BIC provide a detailed breakdown of the results, and I attach an updated breakdown of this. I hope this is useful.

The pilot has produced some interesting results. For example, a Prüm pilot hit has allowed the police to identify a Romanian national who is suspected of attempted rape on a 28-year-old woman. The suspect was arrested in London on 10 November 2015. There are two further Metropolitan Police rape cases being taken forward, and one from the West Mercia Police.

86 The total number of UK person profiles submitted for matching was 2,513; of these, all were submitted for matching against the French and German databases, 2,500 for matching against the French database and 2,405 for matching against the Spanish database.

87 A scene to scene match is one where the same DNA profile was generated from crime scene stains at different crime scenes but no match has been made to an individual.

Letter from the Immigration Minister (James Brokenshire) dated 26 November 2015

PRÜM BUSINESS AND IMPLEMENTATION CASE

I am writing to inform you that the Government has, today laid Command Paper Cm 9149 on the Prüm Business and Implementation Case.

This concludes that rejoining the Prüm Decisions (EU Council Decision 2008/615/JHA and its implementing decision, 2008/616/JHA, in conjunction with Council Framework Decision 2009/905/JHA) would be in the national interest as it would help us to identify foreign criminals and solve serious crimes. This is also the view of law enforcement throughout the United Kingdom, and is based on evidence from those countries already operating the Prüm Decisions and a successful small scale pilot. It also makes clear that stringent safeguards would be put in place in implementing the Prüm Decisions, meaning that no fingerprint or DNA profiles relating to innocent British citizens would be used in implementing the measures and that higher UK scientific standards would be applied. An Oversight Board, including the Biometrics and Information Commissioners, would oversee the domestic operation of the Prüm Decisions.

I am available to meet you, and other Members of your Committee, should you wish to discuss Prüm, particularly the more technical elements, for example around DNA matching rules. My officials have written to yours offering a meeting to discuss Prüm. The date for the vote will be announced through the usual channels in due course.

Formal Minutes

Wednesday 2 December 2015

Members present:

Sir William Cash, in the Chair

Richard Drax

Stephen Kinnock

Damian Green

Craig Mackinlay

Kelvin Hopkins

Mr Andrew Turner

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 127 read and agreed to.

Annex read and agreed to.

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

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

[Adjourned till Thursday 3 December at 10.15am

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/escom.

Session 2015–16

First Report	Documents considered by the Committee on 21 July 2015	HC 342-i
Second Report	Commission Communication: European Agenda on Migration and associated documents	HC 342-ii
Third Report	Documents considered by the Committee on 9 September 2015	HC 342-iii
Fourth Report	Documents considered by the Committee on 16 September 2015	HC 342-iv
Fifth Report	Documents considered by the Committee on 14 October 2015	HC 342-v
Sixth Report	Documents considered by the Committee on 21 October 2015	HC 342-vi
Seventh Report	Documents considered by the Committee on 28 October 2015	HC 342-vii
Eighth Report	Documents considered by the Committee on 4 November 2015	HC 342-viii
Ninth Report	Documents considered by the Committee on 18 November 2015	HC 342-ix