



HOUSE OF LORDS

European Union Committee

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5th Report of Session 2015–16

# The United Kingdom's participation in Prüm

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# The United Kingdom's participation in Prüm

## Introduction

1. On 26 November 2015 the Home Secretary announced, by means of a Written Ministerial Statement, the Government's intention to invite both Houses of Parliament to agree that the United Kingdom should rejoin the Prüm Decisions. These are two Council Decisions<sup>1</sup> under which the police forces of EU Member States are able automatically to share DNA, fingerprint and vehicle registration data. The Government has also invited the two Houses to agree that the United Kingdom rejoin the Framework Decision on the accreditation of forensic service laboratories,<sup>2</sup> which recognises the validity of DNA and fingerprint analyses from other Member States and is necessary for participation in the Prüm Decisions. Although at the time of writing a motion had not been tabled, our understanding is that there will be a debate in the House of Commons on 8 December, and in the House of Lords on 9 December.
2. The Home Secretary's announcement on 26 November, and the hasty tabling of debates in both Houses, came after a period of several months during which the supply of information from the Home Office to the scrutiny committees was irregular and scanty. As recently as 18 November 2015 the Minister for Immigration, James Brokenshire MP, wrote to the House of Commons European Scrutiny Committee regretting that he did not "have a specific date for publication of the Command Paper, or for the vote." He also invited the Committee "to begin consideration of the matter." No explanation has been offered for the sudden urgency (given that the debate could have been held at any time before the end of December), which has in turn made it extremely difficult for scrutiny committees to give proper consideration to the complex and controversial issues on which Parliament will have to take a view. Such scrutiny is all the more vital, given that the Command Paper,<sup>3</sup> on the basis of which the House is to be invited to endorse the Government's recommendation, comprises an 83 page Business and Implementation Case, and 10 annexes—236 pages in total—comprising detailed technical analysis alongside the draft legislation required to implement the Prüm Decisions in national law.
3. **It is deeply regrettable that the Home Office, following its mishandling of parliamentary scrutiny of its decision to opt into 35 justice and home affairs measures in late 2014,<sup>4</sup> is now again treating parliamentary scrutiny in such a disdainful manner.**

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1 Decision 2008/615/JHA, *On the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime*: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1449164181888&uri=CELEX:52008AP0615> [accessed 3 December 2015] and Decision 2008/616/JHA, *On the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime*: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:jl0005> [accessed 3 December 2015]

2 Framework Decision 2009/905/JHA, *Accreditation of forensic service providers carrying out laboratory activities*: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1449147148527&uri=CELEX:32009F0905> [accessed 3 December 2015]

3 Home Office, *Prüm Business and Implementation Case*, Cm 9149, September 2015: <https://www.gov.uk/government/publications/prum-business-and-implementation-case> [accessed 3 December 2015]

4 See HL Deb, 17 November 2014, [cols 326–366](#)

4. The purpose of this Report, which has been agreed by an expedited procedure, is to assist the House, both by presenting the background to the debate in a more succinct and accessible format than the Government has provided, and by putting on the record the view of the European Union Committee on why the UK should rejoin the Prüm Decisions.

5. **We make this report for debate.**

### **The Prüm Treaty**

6. The Prüm Treaty was signed by Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain on 27 May 2005. The objective of the Treaty was to improve “cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal immigration.” It aimed to achieve this by improving the exchange of information between the Contracting States, particularly by giving reciprocal access to national databases containing:

- DNA profiles;
- fingerprints; and
- vehicle registration data.

### **The Prüm Decisions**

7. The Prüm Treaty was an intergovernmental agreement, and it was only in 2008 that the Council of the European Union adopted two Decisions (the “Prüm Decisions”) implementing most of the provisions contained in the Treaty into the Framework of EU law.

8. The first of these Decisions (2008/615/JHA) required Member States to open and keep national DNA analysis files for the investigation of criminal offences. Chapter 2 of the Decision set out rules and procedures for automated searching and transfer of “reference data” held within these files—that is to say, data relating to individual DNA profiles, which could be used to establish a match or ‘hit’, but which do not reveal the identity of the data subject. It then provided that the supply of further personal data relating to any such ‘hit’ should be governed by the national law of the Member State holding the data. Chapter 2 also made provision for the sharing of fingerprint data (subject to similar safeguards), and for allowing automated access to vehicle registration data.

9. Other Chapters within the Decision covered the sharing of data in connection with major events with a cross-border dimension (such as sporting events), conditions for the supply of information in order to prevent terrorist offences, and cross-border police cooperation.

10. The second Decision (2008/616/JHA) contained detailed technical measures necessary for implementation of the first Decision, including on the technical requirements for establishing DNA profiles.

### **The position of the United Kingdom**

11. The Prüm Decisions were adopted under the pre-Lisbon intergovernmental or ‘Third Pillar’ arrangements, which applied to EU police and criminal law measures. They came into effect in August 2008, but while most of the provisions were to be implemented within one year, a three-

year implementation deadline applied to the provisions in Chapter 2 of the principal Decision. This gave Member States more time to achieve compliance with the technical requirements for sharing DNA, fingerprint and vehicle registration data.

12. Even this extended deadline proved challenging, given the technical complexity and cost of installing systems to support the automated exchange of data. In fact in January 2012 the Government told us that by the end of 2011 (four months after the implementation deadline of 26 August 2011) only 10 Member States had completely implemented Decision 2008/615/JHA.
13. A year earlier the Government had notified us that the United Kingdom would be among those who would “not be able to implement Prüm in full before August 2011”.<sup>5</sup> The main reasons given were, first, the Government’s commitment to reform domestic law on DNA and fingerprint data retention,<sup>6</sup> and, secondly, the financial constraints imposed upon Home Office expenditure by the Spending Review 2011–2015.<sup>7</sup>

### The UK block opt-out

14. By 2011 the Lisbon Treaty had entered into force. Under Protocol No. 36 to the EU Treaties, introduced by the Lisbon Treaty, the United Kingdom was able to notify the President of the European Council, no later than 31 May 2014, of its decision not to accept the powers of the Commission and the Court of Justice with respect to any acts of the Union in the field of police and judicial cooperation in criminal matters adopted prior to the entry into force of the Lisbon Treaty. The Government duly notified the Council of its ‘block opt-out’ in respect of all such acts (including the Prüm Decisions) on 24 July 2013.
15. A few weeks earlier, on 9 July 2013, the Government had published a list of 35 measures that it would seek to rejoin, ahead of the block opt-out taking effect on 1 December 2014.<sup>8</sup> This list of measures was endorsed by the House at the end of a debate held on 23 July 2013.
16. The list did not include the Prüm Decisions. Explaining this omission, the Government told us that the UK would not be in a position to implement the Decisions by 1 December 2014, raising the possibility that after this date the UK could be subject to infringement proceedings before the Court of Justice. These could have resulted in the UK being fined at least €9.6 million for non-compliance.<sup>9</sup> At the same time, the Government did not rule out opting in in due course. In July 2014 the Home Secretary told the House of Commons:

“One measure that we have successfully resisted joining is Prüm, a system that allows the police to check DNA, fingerprint and vehicle

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5 Letter from James Brokenshire MP to Lord Roper (Chairman of the EU Committee), [Prüm Council Decisions \(17709/10\)](#), dated 10 January 2012, p18. Letter from James Brokenshire MP to Lord Roper, [Prüm: Agreement between EU, Norway and Iceland \(17709/10\)](#), 7 February 2011, p29.

6 These commitments were implemented by means of the Protection of Freedoms Act 2012.

7 In 2007 the Government estimated the cost of implementing the Prüm Decisions at £31 million.

8 Foreign & Commonwealth Office, *Decision pursuant to article 10 of protocol 36 to the Treaty of the functioning of the European Union*, Cm 8671, July 2013: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235912/8671.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235912/8671.pdf) [accessed 3 December 2015]

9 Letter from the Home Secretary and Lord Chancellor to Lord Boswell of Aynho, [The 2014 opt-out Decision \(Unnumbered\)](#) 18 July 2013, p41.

registration data. I have been clear in the House previously that we have neither the time nor the money to implement Prüm by 1 December. I have said that it will be senseless for us to rejoin it now and risk being infracted. Despite considerable pressure from the Commission and other member states, that remains the case ...

We have been clear that we cannot rejoin that on 1 December and would not seek to do so. However, in order for the House to consider the matter carefully, the Government will produce a business and implementation case and run a small-scale pilot with all the necessary safeguards in place. We will publish that by way of a Command Paper and bring the issue back to Parliament so that it can be debated in an informed way. We are working towards doing so by the end of next year. However, the decision on whether to rejoin Prüm would be one for Parliament.”<sup>10</sup>

17. This approach was reflected in a transitional Council Decision (2014/836/EU) adopted on 27 November 2014, just before the UK's block opt-out came into effect. The Decision noted that, as a result of the block opt-out, the Prüm Decisions would cease to apply to the UK from 1 December 2014.
18. One consequence of this disapplication was that the UK was prevented from accessing for law enforcement purposes the Eurodac database set up under Regulation (EU) 603/2013. This Regulation (a post-Lisbon legislative act, to which the UK is a party) established the Eurodac system for sharing of fingerprint data between Member States. Its primary purpose is to assist in determining asylum applications (and the UK can still access Eurodac for this purpose), but it also allows for the sharing of fingerprint data for law enforcement purposes, subject to Member States having implemented the Prüm Decisions.
19. The transitional Decision of November 2014 also reflected the UK Government's decision to “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, the results of which should be published by 30 September 2015”. If the results of the business and implementation case were to be positive, the United Kingdom would decide whether to notify the Council, by 31 December 2015, of its wish to participate in the Prüm Decisions. The Decision further noted that the United Kingdom had “indicated that a positive vote of its Parliament is required before such decision is taken.”
20. Thus the transitional Decision of November 2014 put the Home Secretary's undertakings, given to Parliament in July 2014, into binding EU law, with precise deadlines. A related Council Decision (2014/837/EU) required the United Kingdom to repay money received from EU funds for implementing the Prüm Decisions, up to a total of €1,508,855, if the United Kingdom decided not to opt back into the Prüm Decisions or missed one of these deadlines. The Government's Business and Implementation case was duly published on the last possible day, 30 September 2015.
21. Contrary to what was implied in the transitional Decision, that Business and Implementation Case did not reach a positive—or indeed a negative—view. It analysed the three options open to the United Kingdom (to maintain the status quo; to rejoin the Prüm Decisions; or to develop some alternative mechanism

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10 HC Deb, 10 July 2014, [col 492](#)

for police cooperation and data sharing) but reached no conclusion. Only when the Home Office republished the Business and Implementation Case as a Command Paper on 26 November was an Executive Summary added, in which the Government's decision to recommend that the UK rejoin the Prüm Decisions was outlined. It is now for Parliament to decide whether or not to endorse this recommendation.

### The role of the Committee

22. The European Union Committee has scrutinised the UK Government's position in relation to the Prüm Decisions for the best part of a decade. In April 2007 we reported on the efforts then being made by the German Presidency of the European Union to incorporate the Prüm Treaty into EU law.<sup>11</sup> We argued that it was essential for legislation setting high standards for data protection to be taken forward in parallel with the proposed Prüm Decisions, and also expressed concern that the threshold for holding DNA profiles in the UK was far lower than in other Member States. These concerns have largely been addressed, both by the development of more robust EU data protection legislation, and by the tightening of the rules on the storage of personal data in UK databases as a result of the Protection of Freedoms Act 2012.
23. Concerns over data protection were still being expressed by witnesses to our inquiry into the UK's block opt-out decision in 2013, though by this stage it was clear both that the Government had not fully implemented the Prüm Decisions, and that it would not do so in the short term.<sup>12</sup>
24. In a follow-up report, 18 months later, we outlined the Government's argument for not seeking to opt back into the Decisions with effect from 1 December 2014, but expressed concern that not rejoining them would mean that UK law enforcement agencies would no longer have automatic access to relevant databases in other Member States, hindering investigation and prosecutions. We therefore expressed the hope that the Government would be prepared, outside the timeframe of the block opt-out, to implement the Decisions in full.<sup>13</sup> The Home Secretary's statement to the House of Commons in July 2014 showed that the Government was at least open to this view.
25. The block opt-out took effect on 1 December 2014, and since that time we have sought to keep track of developments. In February 2015 the Minister for Modern Slavery and Organised Crime, Karen Bradley MP, wrote to our Chairman to update him on progress in completing the Business and Implementation Case and the accompanying pilot. She restated that the Business and Implementation Case would be "brought before Parliament once completed and Parliament would vote on whether the UK should rejoin Prüm".
26. More recently, the flow of information has dried up. When the Business and Implementation Case was published on 30 September 2015, it neither contained a recommendation as to the preferred option, nor did it contain

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11 European Union Committee, *Prüm: an effective weapon against terrorism and crime?* (18th Report, Session 2006–07, HL Paper 90)

12 European Union Committee, *EU police and criminal justice measures: the UK's 2014 opt-out decision*, (13th Report, Session 2012–13, HL Paper 159) para 206

13 European Union Committee, *Follow-up report on EU police and criminal justice measures: the UK's 2014 opt-out decision* (5th Report, Session 2013–14, HL Paper 69), para 61

any detail on the timing of a vote in Parliament, or the terms on which that vote would take place. In the absence of this crucial information, it was in fact not a business case at all. In a letter to the House of Commons European Scrutiny Committee, dated 18 November 2015, the Immigration Minister, James Brokenshire MP, stated: “I am afraid that at this time I do not have a specific date for publication of the Command Paper, or for the vote.” He then invited the Committee “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.” In a letter from this Committee, also dated 18 November, we urged the Government to lay its Command Paper before Parliament “in good time before a vote is scheduled, to enable a full debate.”<sup>14</sup>

27. The publication of the Government’s Command Paper was then announced, by means of a Written Ministerial Statement, on 26 November 2015. As we have noted, the Command Paper turned out to be, as far as it is possible to tell, identical to the Business and Implementation Case published on 30 September, but with the addition of an Executive Summary stating the Government’s belief that “it would be in the national interest for the UK to seek to rejoin Prüm”.<sup>15</sup> Neither the Command Paper nor the accompanying Written Ministerial Statement said anything about the timing of any vote in Parliament, or the terms on which that vote would take place.
28. Under the procedures adopted by the House of Lords in 2010, which in turn reflect commitments made by the then Leader of the House Baroness Ashton of Upholland on 9 June 2008,<sup>16</sup> and repeated by the Minister for Europe David Lidington MP in 2011,<sup>17</sup> the European Union Committee is tasked with making recommendations to the House on whether or not the UK should opt into specific EU proposals in the field of police and criminal justice.
29. Parliament’s debate on whether or not to rejoin the Prüm Decisions is analogous to an opt-in debate, but in the absence of a specific EU proposal to which the UK’s opt-in Protocol applies it does not engage the Ashton-Lidington process. Nevertheless, we believe, given our long-standing scrutiny of the Prüm Decisions and the Government’s own suggestion that Committee input would be welcome, that this report may assist the House. Its purpose is both to present the background to the debate in an accessible format, and to put our view on why the UK should finally rejoin the Prüm Decisions on the record.

### **The Business and Implementation Case**

30. The Business and Implementation Case considers three policy options. The Government’s analysis of these options is summarised below.

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14 Letter from Lord Boswell of Aynho to James Brokenshire MP, 18 November 2015

15 Home Office, *Prüm Business and Implementation Case*, Cm 9149, September 2015: <https://www.gov.uk/government/publications/prum-business-and-implementation-case> [accessed 3 December 2015]

16 HL Deb, 9 June 2008, [cols 376–377](#)

17 HL Deb, 20 January 2011, [cols 20–22WS](#)

*Option 1: Do nothing, maintain the status quo**Overview*

31. Current legislation allows for the international sharing of fingerprints, DNA profiles and vehicle registration data through Interpol for the prevention, detection, investigation or prosecution of crime. The sharing of data must be necessary for that purpose. Any data shared must be relevant and not excessive; they must be accurate and up-to-date; and appropriate measures against unauthorised or unlawful processing, and against accidental loss, damage or destruction, must be in place.
32. These types of international criminal investigation data exchange are processed manually through the National Crime Agency's (NCA) International Crime Bureau.

*DNA and fingerprints*

33. Requests concerning DNA and fingerprint matches are searched against all retained conviction and non-conviction prints for England, Wales and Northern Ireland, as permitted by the Protection of Freedoms Act 2012. This also happens in Scotland, whose regime was the model for the Protection of Freedoms Act 2012. A legitimately retained profile can also be used in the investigation of crime abroad.

*Vehicle Registration Data*

34. The police in England, Scotland, Wales and Northern Ireland have direct access to vehicle registration data (vehicle keeper; previous keepers; vehicle details, including sold and not re-registered; insurance; MOT) via the Police National Computer (PNC) for UK registered vehicles. This information can be accessed in one of four ways: by calling a control centre; using a mobile data terminal; using operational Blackberry devices; or using radio communications. Some road policing vehicles are fitted with a computer terminal which provides limited access to PNC.
35. UK police officers are not routinely able to obtain keeper details of foreign registered vehicles using UK roads. Police told the Government that this was a significant hindrance. There is particular concern in Northern Ireland, which shares a land border with a Member State, yet the Police Service of Northern Ireland has no routine access to Irish vehicle data.
36. In a recent operation,<sup>18</sup> officers from 14 EU countries worked with British police officers from a control centre in the West Midlands. The foreign police officers were able to use their home country's police intelligence systems to verify vehicle details supplied by foreign nationals who were being questioned. This was extremely useful to British policing and a very effective method of targeting foreign criminals in the UK.
37. The Government is now required to allow Member States to access vehicle keeper details held in the UK in order to implement a recent Directive on Cross Border Enforcement.<sup>19</sup> As a minimum this must allow incoming requests from other Member States for the vehicle keeper details of British

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<sup>18</sup> Operation Trivium 3. Full results yet to be published.

<sup>19</sup> Directive (2015/413/EU), *facilitating cross-border exchange of information on road safety traffic offences*: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1449148464331&uri=CELEX:32015L0413> [accessed 3 December 2015]

registered vehicles in those States by May 2017. This will take place through an information exchange system called EUCARIS (the European Car and Driving License Information System).

#### *Volumes*

38. The volume of international data exchange under existing mechanisms is low. It is limited by the availability of resources within the NCA; Interpol exchange channels and processes are often seen as cumbersome and untimely; and Interpol requests are “risk assessed” in the UK, which means they can be rejected for lack of relevant information.

#### *Benefits*

39. The benefits of maintaining the status quo would be that no additional funding would be required (to implement the Prüm Decisions); jurisdiction would not be ceded to the Court of Justice; and the risk of releasing data on an innocent person would remain low as a result of the Protection of Freedom Act 2012.

#### *Risks*

40. The risks are that:
- the current international exchange channels and processes are often poorly defined and cumbersome;
  - current Interpol processes do not require a timed response, affecting the UK's ability promptly to identify and apprehend foreign nationals who are committing offences or reoffending; and
  - there would remain no effective mechanism for routine bulk exchange on volume crime (more than one crime committed by the same offender(s)). An exercise to exchange 250 DNA profiles with the Netherlands proved there was no realistic alternative to Prüm for bulk checks.

### *Option 2: Fully Implement Prüm*

#### *Chapter 2 of the first Prüm Decision*

41. The Business and Implementation Case focuses on implementing Chapter 2<sup>20</sup> of the first Prüm Decision, which provides a mechanism for the international exchange of DNA, fingerprint, and vehicle registration data.
42. The mechanisms in Chapter 2 enable Member States to search other Member States' fingerprint and DNA databases via an automated system, on a hit/no hit basis, and to have direct access to their vehicle registration databases, within the following mandatory response times:
- DNA: 15 minutes;
  - fingerprints: 24 hours; and
  - vehicles: 10 seconds.

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<sup>20</sup> Chapters 3–5 are less onerous to implement, and less significant.

43. Where matches are identified, existing secure police or mutual legal assistance channels can be used to request further (personal) information in accordance with existing procedures, which require manual input. In the case of an identified match on vehicle data, the relevant UK-held data would be sent to the requesting state automatically via EUCARIS.<sup>21</sup>
44. The Government says that, at its core, Prüm potentially provides the strategic platform that could assist UK authorities in distinguishing between criminals and law abiding migrants. It could also help greatly with suspect identification and elimination.

#### *Pilot*

45. The Business and Implementation Case includes evidence derived from a small scale pilot exchange of DNA profiles with France, Germany, the Netherlands and Spain. The main objective of the pilot was to test, within a tightly controlled environment, how Prüm-style bulk exchanges of data would work in practice. It provided valuable insights into both the technical and operational requirements of such exchanges, as well as the number of hits that could potentially be generated.
46. Matching the 2,513 UK pilot crime scene profiles against the databases of the four Member States above yielded 71 scene-to-person<sup>22</sup> matches (2.8% of the sample) and 47 scene-to-scene<sup>23</sup> matches (1.9% of the sample).
47. The Government says that the pilot, while yielding only a small number of hits, suggested that UK participation in Prüm could generate new evidence to support the solution of serious crimes, both from scene-to-person and scene-to-scene DNA matches. EU-wide Prüm participation also offers an opportunity to build intelligence about cross-border criminal activity. The hits in the pilot included verified scene-to-person hits for cases of rape, murder and arson, in which UK investigations are ongoing.

#### *Benefits*

48. The benefits of fully implementing Prüm are as follows:
- Prüm would simplify current EU-wide intelligence gathering processes, encouraging greater sharing of information as a routine activity. An automated step that produces a hit provides the reason for the follow-up request and increases the likelihood that the request will be accepted. This could assist in the identification of serious offenders and in providing valuable intelligence in relation to counter terrorism investigations.
  - Efficiency gains in international searching would mean that UK law enforcement agencies could establish whether an individual was known in another Member State, or eliminate a line of enquiry, much earlier in the investigation. It could also lead to early detention and operations to prevent loss of life and/or property.

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21 See paragraph 37 above.

22 By contrast a person-to-person match is one that just confirms the identity of an individual, who has already been identified in another Member State.

23 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.

- The increase in flow of information and data should cause an increase in matches with unsolved crime data.
- There is currently no other mechanism for detecting volume crime. Prüm would meet a currently suppressed demand, which could lead to improved public confidence in policing.
- Evidence from countries already operating Prüm indicates that it has the potential to identify patterns of crime or criminal associations which are not otherwise apparent. There are well developed fingerprint databases in the EU with the potential to search a dataset in excess of 26 million; full access to such databases would greatly assist the fight against terrorism in the UK.
- The UK would be given access to the Eurodac, the EU-wide database of asylum-seekers' and irregular migrants' fingerprints, which was set up to assist in determining Member State responsibility for examining asylum applications under the Dublin III Regulation.<sup>24</sup> Law enforcement agencies across Member States have recently been granted access to Eurodac for the purposes of investigating very serious crimes. One of the conditions that must be satisfied for access to be granted is that a Prüm search has already taken place. This currently bars the UK law enforcement bodies from accessing this database.

#### *Risks*

49. The key risk to the UK joining Prüm, as voiced by public interest groups and others consulted by the Home Office,<sup>25</sup> is the potential for UK citizens to be identified as suspects of crime in another Member State on the basis of a false match. The business and implementation case addresses the mitigation of this risk under the following headings:
- “Conviction Only DNA Profile and Fingerprint Searching”: the Government’s intention is to allow Member States access only to the DNA profiles or fingerprints of those who have been convicted in the UK.
  - “DNA Adventitious Matches”: DNA profile matches of six and seven loci are said to have a higher probability of being adventitious (DNA profiles from two individuals, who are not identical twins, which match by chance). The Government has therefore decided that the UK would adopt higher standards on DNA loci than the minimum of six stipulated in the Prüm Decisions:
    - only DNA crime scene profiles with more than eight loci should be automatically shared with other Member States on the UK Prüm exchange. This is to ensure that the level of adventitious hits is kept within acceptable and manageable levels; and
    - subsequent requests for the details of the person matched should only be shared following the match of 10 or more loci.

24 Regulation 604/2013/EU, *establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604> [accessed 3 December 2015]

25 Justice, Fair Trials International, Big Brother Watch, Gene Watch UK, DNA Ethics Group, Liberty, the Biometric Commissioner, and Information Commissioner’s Office

- “Automated release of VRD” (vehicle registration data): unlike DNA and fingerprints data requests, vehicle data searches under Prüm trigger the automated release of personal data. The data provided are, however, identical to those that the UK will have to provide under the Cross Border Enforcement Directive set out in Option 1.<sup>26</sup>
  - The Prüm Decisions lay down strict rules to ensure that the exchange of data is only used for the purpose requested, and that an audit trail exists to ensure that anyone who accesses the data is identifiable.
50. The Government is proposing to incorporate several of these safeguards into domestic legislation.<sup>27</sup>
51. Other risks include:
- “Jurisdiction of the Court of Justice”: the Government considers the risk of adverse judgments of the Court of Justice to be at its greatest in relation to substantive criminal law, rather than technical mechanisms for procedural cooperation such as this.
  - “Volume of Work”: the UK’s criminal fingerprint and DNA databases are significantly larger than those in other Member States. There is a risk that there will be a high volume of follow-up work (for example interviewing those revealed by DNA or fingerprint hits to have been present at the scene of a crime), after the initial automated exchange, for the police and prosecution services. In mitigation the Government notes that:
    - evidence from other Member States suggests they have not been overwhelmed with follow-up work since joining Prüm;
    - follow-up requests will be much more targeted as a match within the UK databases will already have been made.
    - access to DNA and fingerprint data is made one Member State at a time. It is therefore possible to control the speed at which information flow takes place;
    - fingerprint exchange is also managed by quota levels: the flow of outbound requests is controlled by Member States so that volume of search requests does not exceed capacity to respond to matches.
  - “Cost”: the infrastructure and running costs to the UK of rejoining Prüm are set out in the implementation section of the Business and Implementation Case and have a rough order of magnitude of £13.5 million.

### *Proportionality*

52. One of the concerns expressed in relation to Prüm is that DNA and, to a lesser extent, fingerprints will be compared for matches even though the offence from which they were recovered is a minor one. Prüm does not permit Member States to reject a request on the grounds of proportionality; there is simply no technical way of stopping a request being made. It is possible, however, in the event of a hit, for a Member State to choose not to send

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<sup>26</sup> See paragraph 31 above.

<sup>27</sup> See paragraph 59 below.

personal data if the crime abroad is not sufficiently serious—in other words, to apply a proportionality bar in respect of the offence being investigated.

53. The Government has also decided to add an additional proportionality bar to follow-up requests for personal data on minors following a verified hit on UK databases. In such cases it will be necessary for the requesting Member State to use a Letter of Request via Mutual Legal Assistance channels, which involves additional safeguards.

#### *Timeline*

54. The Prüm application process and development requirements mean that the UK would not be able to join before 2017 at the earliest.

#### *Governance*

55. Prüm governance would be set up through a Prüm Oversight Group, composed of the NCA, the National Police Chiefs' Council (fingerprints, DNA and vehicle leads), Police Scotland, Police Service Northern Ireland, the Home Office, Department for Transport, Scottish Government, Department of Justice Northern Ireland and the National DNA Database Delivery Unit. The Information Commissioner and Biometric Commissioner would be responsible for auditing UK compliance with safeguards set out in the business and implementation case. The National DNA Strategy Board would continue to retain oversight of international DNA exchange

#### *Implementation*

56. An initial implementation of Prüm, phase 1, would establish automated exchanges with two or three other Member State in Prüm using only the essential software until the technical processes were fully refined. The NCA would also act as gatekeeper to maintain the volume of outbound requests. Each Member State in Prüm has decided to implement it incrementally in this way. The Government believes a service working nine hours a day five days a week would be sufficient.
57. By contrast, incoming Prüm transactions are relatively easy to manage. There is one technical programme to implement, which is illustrated in the Business and Implementation Case. This would be fully implemented in phase 1.
58. This initial implementation for outbound requests would be followed by the deployment of a fully automated exchange mechanism, phase 2, which would support the wider rollout of connections to other Prüm Member States. The full solution would require further technical change but build on phase 1 and so would encompass spend already made.

#### *Legislation*

59. The Government says there is nothing in the Prüm Decisions that would need to be transposed into domestic law. It may, nevertheless, be desirable to include a number of data protection safeguards in domestic legislation.<sup>28</sup>
60. First, legislation could specify that when other Member States conduct searches through Prüm against the UK's DNA and fingerprint databases,

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28 Draft secondary legislation is set out in Annex J of the Command Paper, and a copy is appended to this Report in Appendix 2.

those searches will not be run across the DNA or fingerprints of those who have not been convicted.

61. Second, safeguards could be put in place before personal data are sent to another Member State following a hit on the UK's DNA database:
  - (a) in the event of a person-to-person hit, the UK will request the individual's fingerprints and, if those fingerprints are provided, use the fingerprints to confirm their identity;
  - (b) the UK will not provide personal data unless the DNA hit is sufficiently accurate (accurate to 10 loci or more); and
  - (c) in the event of a hit against a person under 18 years old, the UK can only provide personal data if the Member State makes a request for the information using a formal Letter of Request via mutual legal assistance channels
62. Finally, the safeguard in (c) above could also be applied to hits against the UK's fingerprint database.

*Framework Decision on the accreditation of forensic service laboratories*

63. The Business and Implementation Case briefly considers the Framework Decision on the accreditation of forensic service laboratories,<sup>29</sup> which the UK would have to rejoin together with the Prüm Decisions. This legislation requires forensic service providers carrying out laboratory activities (for both fingerprints and DNA) to be accredited by a national accreditation body as complying with EN ISO/IEC 17025. It requires the results of similarly accredited forensic service providers in other Member States to be treated as being equally reliable as domestic laboratories. These rules on mutual recognition would not affect national rules on the assessment of DNA and fingerprint evidence in court proceedings.

*Option 3: Alternatives to Prüm*

64. There are two possible options that could allow the UK to adopt Prüm-style arrangements with other Member States by means other than opting in to the Prüm Decisions:
  - an international agreement with the EU incorporating some or all of the provisions of the Prüm Decisions (similar to the arrangements Norway and Iceland have with the EU on Prüm); and
  - bilateral agreements between the UK and individual Member States.

*An international agreement*

65. The Government has given consideration to whether it would be possible to negotiate an international agreement with the EU that would allow the UK to participate in Prüm without becoming subject to the jurisdiction of the Court of Justice. It concludes that it would not, in practice, be possible.
66. In procedural terms, an international agreement with the EU would need to be proposed by the Commission. The UK can rejoin Prüm under existing

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<sup>29</sup> Framework Decision 2009/905/JHA, *Accreditation of forensic service providers carrying out laboratory activities*,: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1449147148527&uri=CELEX:32009F0905> [accessed 3 December 2015]

EU legal procedures, which the Commission is likely to argue should not be bypassed. The Commission would therefore be unlikely to agree to the UK negotiating a bilateral agreement. Moreover, there is no precedent for an international agreement between the EU and a Member State on an area of policy in which that Member State has the ability to participate under the EU Treaties.

67. Even were the Commission to propose an international agreement, it would require the consent of the European Parliament and a qualified majority of other Member States in the Council to support it. Indications are that the vast majority of other Member States would take a similar view to the Commission, meaning it is unlikely that a qualified majority could be achieved. The views of the European Parliament on this issue are not known but it too would be unlikely to support an international agreement.

*Bilateral agreements with EU Member States*

68. Such agreements would, obviously, require the consent of those other Member States; but like the EU institutions, they too may be reluctant to agree bilateral relationships with the UK when it is open for the UK to join Prüm under existing EU procedures.
69. It would be possible for the UK to add conditions to a bilateral agreement that differed from Prüm; the UK would also retain the ability unilaterally to denounce the agreement, as would the other Member States.
70. The UK has already entered into bilateral memoranda of understanding with four Member States to exchange DNA, as part of the pilot under-pinning the Business and Implementation Case, but these agreements are time-limited.
71. The Government says that bilateral agreements would also be subject to the jurisdiction of the Court of Justice.
72. The cost of implementation would be the same as implementing Prüm and the process of implementation would be similar.

**Conclusions**

*Alternatives to Prüm*

73. The Business and Implementation Case makes plain that current procedures for exchanging data relating to criminal investigation through Interpol are slow, labour-intensive, and frequently rejected. As a consequence, the volume of international exchanges to and from the UK is low. The Government concludes that “the UK is potentially missing opportunities to promptly identify and apprehend foreign nationals who are committing offences or reoffending.”<sup>30</sup> Maintaining the status quo is therefore not a credible option.
74. Reaching bilateral agreements with either the EU as a whole or separately with its Member States will require the other party to be willing to enter into the agreement. We agree that, for as long as the UK can rejoin Prüm within the framework of the EU Treaties, neither the EU institutions, nor other EU Member States, are likely to wish to enter into a bilateral agreement

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30 Home Office, *Prüm Business and Implementation Case*, Cm 9149, September 2015, page 18: <https://www.gov.uk/government/publications/prum-business-and-implementation-case> [accessed 3 December 2015]

covering the same policy with the UK. Reliance upon bilateral agreements is therefore also not a credible option.

75. **We agree with the Government's conclusion that neither maintaining the status quo for international exchange of data relating to criminal investigation under option 1, nor reaching bilateral agreements with either the EU as a whole or with Member States individually under option 3, would be in the public interest.**

*Rejoining Prüm*

76. It is clear to us that the major benefit of fully implementing Prüm is that the initial automated exchange of data relating to criminal investigation, enabling targeted follow-up action, would solve more crimes more quickly, would identify international criminals and volume crime more effectively, and would build up intelligence relevant to the investigation of very serious crime, including terrorism. The recent increase in the level of the terrorist threat underlines the critical importance of realising these benefits, in order to protect the people of the United Kingdom more effectively.
77. We acknowledge that the greatest risk in implementing Prüm is the possibility that a UK national could be matched to a crime in another Member State through a false DNA or fingerprint match. This risk will rise with the full implementation of Prüm, given the significant increase in the volume of data exchanges that is predicted. The mitigations and safeguards proposed in the Business and Implementation Case are therefore essential.
78. **We underline the need to respect the safeguards set out in the Prüm Decisions themselves, and fully support the extra measures the Government proposes to take. At the same time, we ask the Government to confirm that the proposed statutory instrument incorporating these measures into national law will be consistent with the Prüm Decisions, and so will not lead to infringement proceedings being brought by the Commission against the UK in the Court of Justice.**
79. **We recognise that a significant increase in the volume of inbound and outbound data requests for the purposes of criminal investigation will be a probable consequence of implementing Prüm, and that this will have an impact on police resources. We believe that this additional burden will be outweighed by the benefits to law enforcement of rejoining.**
80. **We therefore agree with the Government's assessment, which is consistent with the view expressed by this Committee over several years, that UK participation in the Prüm Decisions is in the public interest, and will enable law enforcement agencies to fight both national and international crime more effectively. The current terrorist threat underlines the critical and urgent importance of strengthening law enforcement agencies by rejoining the two Prüm Decisions.**
81. **It follows that we consider that the Government should also rejoin the Framework Decision on the accreditation of forensic service laboratories, which recognises the validity of DNA and fingerprint**

**analyses from other Member States and which is necessary for participation in the Prüm Decisions.**

82. **We accordingly recommend to the House that it endorse the Government's proposal that the United Kingdom should rejoin the Prüm Decisions and the related Framework Decision on the accreditation of forensic service laboratories.**

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Condon  
 Lord Cormack  
 Lord Faulkner of Worcester  
 Baroness Janke  
 Lord Jay of Ewelme  
 Baroness Pinnock  
 Baroness Prashar (Chairman)  
 Baroness Massey of Darwen  
 Lord Morris of Handsworth  
 Lord Ribeiro  
 Lord Soley  
 Lord Wasserman

### Declarations of interest

Lord Condon  
*No relevant interests*

Lord Cormack  
*No relevant interests*

Lord Faulkner of Worcester  
*No relevant interests*

Baroness Janke  
*No relevant interests*

Lord Jay of Ewelme  
*Vice Chairman, Business for New Europe*  
*Member, Senior European Experts Group (an independent group that prepares briefing papers on contemporary European and EU topics)*

Baroness Pinnock  
*No relevant interests*

Baroness Prashar (Chairman)  
*No relevant interests*

Baroness Massey of Darwen  
*No relevant interests*

Lord Morris of Handsworth  
*No relevant interests*

Lord Ribeiro  
*No relevant interests*

Lord Soley  
*No relevant interests*

Lord Wasserman  
*Strategic Adviser to Safety and Graphics Business Group, 3M United Kingdom plc, a company which has supplied automatic fingerprint identification to the EU*

The report was approved by the Chairman of the EU Select Committee, Lord Boswell of Aynho, as authorised under paragraph 11.55 of the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2015 edition).

A full list of Members' interest can be found in the Register of Lords Interests <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

## APPENDIX 2: DRAFT STATUTORY INSTRUMENT IMPLEMENTING THE PRÜM DECISIONS

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The following draft statutory instrument is taken from Annex J of the Business and Implementation Case.

### Draft legislation for the purposes of Council Decision 2008/615/JHA and Council Framework Decision 2009/905/JHA<sup>31</sup>

#### *Part 1: General*

##### *Interpretation*

1. In these [Regulations]—

“convicted” includes—

- (a) in England and Wales, the circumstances covered by section 65B of the Police and Criminal Evidence Act 1984 Act; and
- (b) in Northern Ireland, the circumstances covered by article 53B of the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>32</sup>;

“dactyloscopic data” means any image of a fingerprint or palm print, including an image of a latent fingerprint or palm print, and including templates of such images;

“DNA-profile” has the meaning given by section 65 of the Police and Criminal Evidence Act 1984;

“forensic service provider” means any person that carries out any laboratory activity at the request of a person responsible for the prevention, detection or investigation of criminal offences;

“laboratory activity” means any measure taken in a laboratory when locating and recovering traces of DNA or dactyloscopic data on items, as well as developing, analysing and interpreting forensic evidence, with a view to providing expert opinions or exchanging forensic evidence with another member State;

“latent” means any fingerprint or palm print that through processing has been made visible for the purpose of creating an image;

“loci” means any set of identification characteristics of the non-coding part of an analysed human DNA sample, being the particular molecular structure at the various DNA locations;

“non-coding part of an analysed human DNA sample” means chromosome regions not genetically expressed, being those regions not known to provide for any functional properties of an organism;

“personal data” has the meaning given by section 1 of the Data Protection Act 1998;

“recordable offence” has the meaning—

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<sup>31</sup> As noted in the Business and Implementation Case, there may also need to be further legislation or amendments to this draft legislation to fully capture these safeguards and forensic service provider requirements in relation to Northern Ireland and Scotland

<sup>32</sup> Not yet commenced.

- (a) in England and Wales, given by section 118 of the Police and Criminal Evidence Act 1984;
- (b) in Northern Ireland, given by article 2 of the Police and Criminal Evidence (Northern Ireland) Order 1989;

“reference DNA-profile” means any DNA-profile of an identified person;

“result of a laboratory activity” means any analytical output and any directly associated interpretation of such output;

“UKAS” means the United Kingdom Accreditation Service within the meaning of regulation 2(1) of the Accreditation Regulations 2009;

“unidentified DNA-profile” means any DNA-profile collected during the investigation of a criminal offence and belonging to a person not yet identified; and

“Union accredited forensic service provider” means any forensic service provider in any other member State accredited in accordance with Article 4 of Council Framework Decision 2009/905/JHA of 30 November 2009 on Accreditation of forensic service providers carrying out laboratory activities.

## *Part 2: Data Protection under Council Decision 2008/615/JHA*

### *Scope of searches under Council Decision 2008/615/JHA*

2. When, in accordance with Articles 3, 4 or 9 of Council Decision 2008/615/JHA, a member State searches or compares any DNA-profile or dactyloscopic data it holds against DNA-profiles or dactyloscopic data held by the United Kingdom, the national unit must ensure that those searches or comparisons are only against—

- (a) unidentified DNA-profiles;
- (b) reference DNA-profiles relating to persons who have been convicted of a recordable offence; and
- (c) dactyloscopic data relating to persons who have been convicted of a recordable offence.

### *Provision of personal data following a DNA-profile match*

3.—(1) Subject to paragraphs (2) to (4), where, pursuant to a search or comparison made by a member State under Articles 3 or 4 of Council Decision 2008/615/JHA, a match is shown between any DNA-profile held by that member State and any DNA-profile held by the United Kingdom, the national unit may provide the personal data it holds relating to the matched DNA-profile to the member State that made the search or comparison.

(2) The national unit must not provide the personal data where—

- (a) the member State that made the search or comparison has not requested the personal data relating to the matched DNA-profile;
- (b) the matched DNA-profile does not include ten or more matching loci;
- (c) the personal data relates to a person aged under 18, unless the request for the personal data is received by the national unit following a formal request for mutual legal assistance to the United Kingdom Central Authority for the Exchange of Criminal Records; or

- (d) subject to paragraphs (3) and (4), both the DNA-profile held by the member State and the DNA-profile held by the United Kingdom are reference DNA-profiles.

(3) In the circumstances set out in paragraph 2(d), the national unit may, unless one or more of paragraphs 2(a) to (c) applies, request that the member State requesting the personal data provides dactyloscopic data for the person to whom the reference DNA-profile relates.

(4) Where—

- (a) the member State requesting the personal data provides dactyloscopic data in response to a request under paragraph (3); and

- (b) there is a match with dactyloscopic data held by the United Kingdom;

the national unit may, subject to paragraph (2)(c), provide the personal data it holds relating to the matched dactyloscopic data.

*Provision of personal data following a dactyloscopic data match*

4.—(1) Subject to paragraph (2), where, pursuant to a search made by a member State under Article 9 of Council Decision 2008/615/JHA, a match is shown between any dactyloscopic data held by that member State and any dactyloscopic data held by the United Kingdom, the national unit may provide the personal data it holds relating to the matched dactyloscopic data to the member State that made the search.

(2) The national unit must not provide the personal data it holds relating to the matched dactyloscopic data to the member State that made the search or comparison where—

- (a) the member State that made the search has not requested the personal data relating to the matched dactyloscopic data; or

- (b) the personal data relates to a person aged under 18, unless the request for the personal data is received by the national unit following a formal request for mutual legal assistance to the United Kingdom Central Authority for the Exchange of Criminal Records.

*Part 3: Accreditation of Forensic Service Providers*

*Scope of provisions relating to forensic providers*

5.—(1) This Part applies to any laboratory activity resulting in:

- (a) a DNA-profile; or
- (b) dactyloscopic data.

(2) Nothing in this Part affects rules of evidence.

*Accreditation*

6. Any forensic service provider carrying out a laboratory activity must be accredited by UKAS as complying with BS EN ISO/IEC 17025:2005.

*Recognition of results*

7. A person responsible for the prevention, detection, or investigation of criminal offences must recognise the result of a laboratory activity provided by a Unionaccredited forensic service provider as being equally reliable as the

result of a laboratory activity provided by a forensic service provider accredited in accordance with Regulation 6.

*Enforcement*

8.—(1) If the Secretary of State becomes aware that a person has not complied with its duties under this Part, the Secretary of State may, by notice to that person, specify—

- (a) measures that the person must take to ensure that that person complies with this Part; and .
- (b) the deadline by which those measures must be taken.

(2) The Secretary of State must consider any representations about the notice received from the person to whom the notice is addressed, and may amend or withdraw the notice.

(3) If the specified measures have not been taken by the specified deadline, the Secretary of State may apply to the High Court for an order requiring the person to comply with the notice or otherwise carry out its duties under this Part.

*Guidance*

9. The Secretary of State may give guidance to a person responsible for the prevention, detection or investigation of criminal offences with respect to the practical implementation of this Part, and a person to whom such guidance is given must have regard to it.