

European Scrutiny Committee

House of Commons, London, SW1A 0AA

Tel (020) 7219 3292 Email escom@parliament.uk Website www.parliament.uk/escom

From: Sir William Cash MP

2 July 2020

Rt Hon James Brokenshire MP
Minister of State for Security
Home Office
2 Marsham Street
London SW1P 4DF

**Cross-border police cooperation: the automated exchange of DNA and fingerprint data under Prüm
(Council Implementing Decision (EU) 2019/968 and Council document 14247/19) (ESC numbers 40679 and 41121)**

Thank you for your [letter of 15 June 2020](#) concerning UK participation in the data sharing mechanisms established by the Prüm Decisions. Your letter supplements a [Written Statement](#) of the same date informing Parliament of the Government's decision to include in its Prüm data sharing arrangements with EU Member States the DNA profiles of criminal suspects held in the UK's national DNA databases (subject to ongoing consultations with the Scottish Government).

The Government's decision stems from a [Council Implementing Decision](#) adopted in June 2019 which our predecessor Committee examined and reported on in July 2019. The Council Implementing Decision authorised the UK to take part in the automated exchange of DNA profiles, but this authorisation was made conditional on the UK reviewing its policy of excluding the DNA profiles of criminal suspects from its automated data exchanges with EU Member States. The Council set a deadline of 15 June 2020 for completing the review and made clear that continued exchanges of DNA data would be at risk if the UK failed to change its policy.

As you are aware, House of Commons approval for UK participation in Prüm was given on the understanding that "only a subset of the relevant national DNA and fingerprint databases, containing data relating to individuals convicted of recordable offences, [would] be made available for searching by other participating States". The fingerprint and DNA data of criminal suspects were expressly excluded, reflecting a commitment made by the Government in its [Prüm Business and Implementation Case](#) (published as a Command Paper in November

2015) to specify in legislation that “when other Member States conduct searches through Prüm against the UK’s DNA and fingerprint databases, those searches will not be run across the DNA or fingerprints of those who have not been convicted”.¹

A change in the Government’s policy on access to the DNA profiles and fingerprints of criminal suspects therefore merits particularly close scrutiny by Parliament, given that it alters the very basis on which Parliament agreed to UK participation in Prüm data exchanges in December 2015. That is why our predecessor Committee asked the Government, in July 2019, to provide further information on the process and timescale for conducting the review required by the Council Implementing Decision and how the Government intended to inform and consult with Parliament during the review.² In your letter, you “note the summary comments contained in [the European Scrutiny] Committee’s Report shared with the Home Office on 17 July 2019” but you do not respond to any of the concerns raised in the Report’s conclusions. In fairness, this is a discourtesy which we attribute to your predecessors, whose engagement with this Committee has been poor, not to you. **We nonetheless ask you, as the responsible Minister, to explain why we have not had a response and what efforts the Government made to inform and consult with Parliament during the review process.**

A [second \(draft\) Council Implementing Decision](#) which would authorise the UK to take part in the automated exchange of fingerprint data was deposited for scrutiny in March 2020, following its publication by the Council in December 2019. It includes the same review clause as the earlier Council Implementing Decision, this time on the inclusion of the fingerprints of criminal suspects in the UK’s automated data exchanges. In your Explanatory Memorandum dated 26 June, you tell us that the Government notified the EU institutions on 15 June 2020 that “suspects’ profiles will be included in all automated biometric data exchanges within the shareable Prüm dataset, *including fingerprints once sharing begins*” (our emphasis). In our view, this was not made clear in your Written Statement of 15 June 2020 or in your letter of the same date to this Committee. Our understanding was that the review specifically concerned DNA profiles.

We ask you to:

- **explain the reasons for the delay in depositing the document for scrutiny (it was published on 5 December 2019) and in submitting an Explanatory Memorandum more than three months after it was due;**

¹ See p.79 of Command Paper 9149.

² See the European Scrutiny Committee’s Seventy-second Report HC 301-lxx (2017-19), [chapter 3](#) (17 July 2019).

- **confirm that the notification given to the EU institutions on 15 June 2020 concerning the exchange of suspects' data covers DNA and fingerprints and, if so, why this was not made explicit in your Written Statement to Parliament of the same date;**
- **explain why you notified us of the Government's policy review *after* it had concluded, rather than seeking to engage with Parliament earlier in the process, given that Parliament's endorsement of UK participation in Prüm in December 2015 was expressly based on the exclusion of criminal suspects' DNA and fingerprint data from automated Prüm searches; and**
- **clarify the implications (legal and political) of the European Parliament's decision to reject the Council Implementing Decision on the exchange of fingerprint data and the effect it may have on automated exchanges of fingerprint data between the EU and the EU during transition;**

You acknowledge in your letter that the Government's policy to date of excluding the DNA profiles and fingerprint data of criminal suspects "puts us out of step with EU Member States". **Do you consider that UK implementation, following your policy review, is now fully in conformity with the Prüm Decisions?**

Turning to the future, we note that the EU and the UK have both put forward proposals to maintain the Prüm data sharing arrangements after transition. Both sets of proposals differ (though in different ways) from the existing precedents established in agreements with Iceland, Norway, Switzerland and Liechtenstein, as we set out in our XX Report. **We ask you to explain why the Government has decided to depart from these precedents, particularly the provisions which seek to ensure consistent application and interpretation of the rules governing Prüm exchanges.**

For the Prüm data sharing arrangements to operate effectively after transition, we assume that the conditions governing access to data would have to remain broadly the same in the UK and in the EU to ensure that these reciprocal exchanges yield equivalent benefits for law enforcement and equivalent protections for those whose data is being shared. The existing third country precedents include specific mechanisms to adapt to changes made by the EU to the Prüm Decisions themselves and to ensure a uniform application and interpretation of the rules in the EU and in participating third countries. These mechanisms are not replicated in the UK's draft legal text. The text does, however, include a provision giving an EU/UK Joint Committee the power to agree, by mutual consent, amendments to the agreement "in light of changes to the legislation of the United Kingdom, the Union or the Member States". Amendments agreed to by the Joint Committee would "be confirmed by and enter into force upon the exchange of diplomatic

notes between the United Kingdom and the Union, unless otherwise agreed” and so would not as a rule require approval by Parliament or ratification.³ **Do you envisage this provision providing the vehicle for updating the EU/UK agreement on law enforcement cooperation to reflect changes in EU rules governing Prüm exchanges? How do you anticipate translating these changes into domestic UK law where necessary to keep the UK in step with any future changes to the Prüm Decisions? Do you accept that changes of this nature to align UK domestic laws with changes to EU law would require close engagement with Parliament, not least to ensure there is no conflict between the commitments made in international law and how they are given effect to in domestic law?**

I look forward to receiving your response within ten working days.

I am copying this letter to the Chair (Rt Hon Hilary Benn MP) and Clerk (Gordon Clarke) of the Committee on the Future Relationship with the European Union; the Chair (Rt Hon Yvette Cooper MP) and Clerk (Elizabeth Hunt) of the Home Affairs Committee; the Chair (Sir Robert Neill MP) and the Clerk (David Weir) of the Justice Committee; the Chair (Rt Hon Harriet Harman QC MP) and the Clerk (Lucinda Maer) of the Joint Committee on Human Rights; the Chair (the Earl of Kinnoull) and Clerk (Stuart Stoner) of the Lords European Union Committee; Alex Bernal of your Department; and Les Saunders and Donald Harris in the Cabinet Office.

CHAIR

³ See Parts 13 and 14 of the UK’s draft legal text on institutional provisions and on general and final provisions.